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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretariat

The present report, submitted pursuant to Human Rights Council resolution 26/18, explores the obligations of Member States of the United Nations and non-State actors regarding sport and healthy lifestyles as contributing factors to the right to health, with a focus on sport and physical activity. The Special Rapporteur recommends that States review their laws, policies and programmes concerning sport and healthy lifestyles to ensure compliance with the right to health, immediately removing those that are discriminatory or exclusionary, and implement or enforce mechanisms to protect the health rights of amateur and professional athletes. States should also take positive steps to fulfil the right to health by facilitating or providing access to safe spaces in which all people can participate in sport and physical activity.

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I. Introduction

1. In its resolution 26/18, the Human Rights Council requested that the Special Rapporteur prepare, in consultation with relevant stakeholders, a study on the theme of sport and healthy lifestyles as contributing factors to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and requested that the Special Rapporteur undertake a consultation process exploring those themes. The present report is submitted in accordance with that resolution, and was prepared on the basis of a questionnaire sent to States and relevant stakeholders[1] and an expert meeting that was held in Geneva in November 2015.

2. The present report explores the obligations of Member States of the United Nations and non-State actors regarding realization of the right to health and sport and healthy lifestyles. The Special Rapporteur has chosen to focus on the evidence and the relevant obligations that arise in relation to sport and physical activity, building upon the important work carried out by the previous mandate holder on unhealthy foods, non-communicable diseases and the right to health.[2]

II. Sport and healthy lifestyles and the right to health

3. In its 2011 resolution on the prevention and control of non-communicable diseases, the General Assembly, in reaffirming the right of everyone to the highest attainable standard of mental and physical health, acknowledged that the global burden and threat of non-communicable diseases constituted "one of the major challenges for development in the twenty-first century". The General Assembly recognized that many non-communicable diseases are linked to common risk factors, including tobacco use, harmful use of alcohol, an unhealthy diet and lack of physical activity.[3] Non-communicable diseases have a disproportionate impact on women's health and are the leading cause of death in women globally, killing around 18 million women a year.[4]

4. In order to combat the growing threat of non-communicable diseases effectively, and to equitably realize the highest attainable standard of mental and physical health across populations, all people must be enabled to adopt healthy lifestyles. Article 12 of the International Covenant on Economic, Social and Cultural Rights refers to the highest attainable standard of physical and mental health, which the Committee on Economic, Social and Cultural Rights has confirmed is not confined to the right to health care, but embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life;[5] these include the readily modifiable risk factors for non-communicable diseases identified by the General Assembly.

5. In other United Nations documents, participation in sport and physical activity is recognized as a stand-alone right. The recently revised International Charter of Physical Education, Physical Activity and Sport (of the United Nations Educational, Scientific and

[1] Replies to the questionnaire are available as received at www.ohchr.org/EN/Issues/Health/Pages/HealthyLifestylescontributions.aspx.

[2] See A/HRC/26/31.

[3] See General Assembly resolution 66/2.

[4] Union for International Cancer Control and 4 others, *Non-communicable Diseases: A Priority for Women's Health and Development* (2011).

[5] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

Cultural Organization) recognizes that the practice of physical education, physical activity and sport is a fundamental right for every human being, without discrimination. Equal participation in sport as a right has also been recognized in article 13 of the Convention on the Elimination of All Forms of Discrimination Against Women and in article 30 of the Convention on the Rights of Persons with Disabilities.

6. Moreover, in 2004, the World Health Assembly endorsed the Global Strategy on Diet, Physical Activity and Health, of the World Health Organization (WHO), which outlines actions that must be taken by various actors to foster participation in physical activity.

7. The present report primarily considers participation in sport and physical activity, and the right to health. Other lifestyle factors, such as the avoidance of unhealthy foods, are beyond the scope of the report, and will be discussed to the extent that they are connected to sport and healthy lifestyles.

Sport, physical activity and health

8. It has been estimated that over 7 per cent of deaths annually are attributable to low levels of physical activity, along with more than 4 per cent of years of life lost due to disability (disability-adjusted life years).[6] Physical inactivity is estimated as being responsible for up to 25 per cent of cases of breast and colon cancer, 27 per cent of cases of diabetes and 30 per cent of cases of ischaemic heart disease.[7] Conversely, participation in physical activity and sport has numerous beneficial effects. Physical activity reduces the risk of developing cardiovascular diseases, diabetes and cancer, improves levels of high-density cholesterol, reduces blood pressure, and improves blood glucose level control among the overweight.[8] Physical activity also reduces the risk of depression and is a vital aspect of energy balance and weight control.[9] Accordingly, WHO has developed the Global Recommendations on Physical Activity for Health, which are designed to provide guidance on the optimal and the minimum levels of exercise that individuals should partake in to accrue these health benefits.

9. There is no universal definition for "sport", as a separate concept to that of physical activity. Sport has been defined as "all forms of physical activity that contribute to physical fitness, mental well-being and social interaction", including play, recreation, casual, organized or competitive sport, and indigenous sport or games.[10] In the present report, "sport" refers to competitive or organized sport involving physical activity; it is considered a subset of "physical activity", which refers to bodily movement that is not necessarily competitive or organized (e.g. walking or cycling for transport or recreation).

10. The benefits of sport, over and above unstructured physical activity, have not yet been fully ascertained, and more research is required in this area. However, preliminary findings indicate that a larger quantum of health benefit is gained from low-to-moderate participation in team sports than in more individual activities such as walking or gymnasium use.[11] Positive psychological outcomes, including improved well-being and

[6] Institute for Health Metrics and Evaluation, *The Global Burden of Disease: Generating Evidence, Guiding Policy* (Seattle, 2013).

[7] WHO, *Global Health Risks: Mortality and Burden of Disease Attributable to Selected Major Risks* (2009).

[8] WHO, *Global Strategy on Diet, Physical Activity and Health* (2004).

[9] WHO, *Global Recommendations on Physical Activity for Health* (2010).

[10] UNICEF, *Protecting Children from Violence in Sport* (2010).

[11] Rochelle Eime and others, "Does sports club participation contribute to health-related quality of life?" *Medicine and Science in Sports and Exercise*, vol. 42, No. 5 (December 2009).

social functioning and reduced stress, are reported more frequently among sports participants,[12] as is improved life satisfaction.[13] Additionally, although any form of daily physical activity is associated with a lowered risk of psychological distress, the strongest effect is seen in sport (as opposed to other activities such as walking or domestic work).[14]

11. However, overtraining, doping and the performing of unnecessary medical procedures can have negative health impacts on individuals, and may represent rights violations in some instances. Moreover, certain types of sport or physical activity may produce positive effects in some subpopulations and negative effects in others.[15] For instance, participation in sporting activities where physical appearance is an important factor may increase the risk of developing female athlete triad, a syndrome suffered by female athletes which may involve eating disorders, delayed or interrupted menstruation, and osteoporosis (low bone mass). This syndrome is usually caused by self-imposed or externally driven pressure to maintain an unrealistically low body weight. For these reasons, a nuanced approach is required when considering sport and physical activity as a tool for realizing the right to health.

III. Obligations of States regarding sport and healthy lifestyles and the right to health

12. In its general comment No. 14 (2000) on substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights confirmed that certain aspects of human health cannot be addressed solely within the relationship between States and individuals, and noted that various factors may play an important role in relation to human health, such as genetic factors or the adoption of unhealthy or risky lifestyles. However, this does not absolve States of any obligations in this regard. Just as a State may implement a genetic diseases screening project to improve the health of the population despite being unable to modify genetic risk, an obligation also arises for States to attempt to reduce the extent to which individuals adopt unhealthy or risky lifestyles, even if they cannot directly influence individual behaviour.

13. There has been a troubling tendency to view engagement in physical activity as an individual or moral obligation, and to characterize a sedentary lifestyle as a personal failing, to be overcome with willpower. This ignores the powerful role that social or structural determinants of health play in dictating supposed lifestyle "choices", and the vital role of the State in mitigating the effect of such negative determinants by promoting, facilitating and encouraging the adoption of healthy lifestyles through education, social policy and public investments.[16] Illustrating this principle, the Committee on Economic, Social and Cultural Rights has expressly stated that the obligation to "fulfil" requires States to disseminate appropriate information relating to healthy lifestyles and nutrition and to

[12] Rochelle Eime and others, "A systematic review of the psychological and social benefits of participation in sport for adults: informing development of a conceptual model of health through sport", *International Journal of Behavioral Nutrition and Physical Activity*, vol. 10 (December 2013).

[13] Runar Vilhjalmsson and Thorolfur Thorlindsson, "The integrative and physiological effects of sport participation: a study of adolescents", *Sociological Quarterly*, vol. 33, No. 4.

[14] Mark Hamer, Emmanual Stamatakis and Andrew Steptoe, "Dose-response relationship between physical activity and mental health: the Scottish Health Survey", *British Journal of Sports Medicine*, vol. 43, No. 14.

[15] Melinda Asztalos and others, "Specific associations between types of physical activity and components of mental health", *Journal of Science and Medicine in Sport*, vol. 12, No. 4.

[16] WHO, Report of the Commission on Ending Childhood Obesity (2016).

encourage and support people in making informed choices about their health;[17] this encompasses provision of appropriate information regarding sport and physical activity, and ensuring the availability, accessibility, acceptability and quality of certain goods, services and facilities.

14. Additionally, article 12 of the International Covenant on Economic, Social and Cultural Rights requires States parties to take steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. As overweight and obesity reach endemic levels in much of the world, and are becoming increasingly prevalent in developing countries,[18] States should address the underlying determinants of these diseases — such as a sedentary lifestyle — in fulfilment of their obligation pertaining to prevention. This conclusion is supported by the General Assembly, which recognizes prevention as the "cornerstone" of the global response to non-communicable diseases, and the "critical importance" of reducing people's exposure to modifiable risk factors related to diet and physical inactivity.[19]

15. In order to discharge these obligations that are accrued under the right to health, States should take varying actions depending on their particular state of development and availability of resources.

Respect

16. The obligation to respect the right to health by refraining from denying or limiting access to health services and by abstaining from enforcing discriminatory practices as a State policy extends to participation in sport and physical activity. All people should be permitted to access State-run sporting facilities on an equal basis. Discrimination in access on grounds such as gender, race, ethnicity, religion, sexual orientation, gender identity, sex characteristics, or legal and health status (including HIV/AIDS status) is not permissible. States should conduct an inclusive, participatory and transparent audit of practices, rules and by-laws relating to sport and the right to health in order to determine their compatibility with human rights standards and should remove any which are discriminatory.

17. Moreover, sport and physical activity should be taken into account in all governmental policies, in accordance with the Helsinki Statement on Health in All Policies.[20] States must ensure that relevant laws, policies and programmes in non-health sectors, which are de jure or de facto discriminatory, are not adopted, or are amended or rescinded. For example, States should refrain from implementing and enforcing laws and policies that limit equitable access to goods such as affordable and nutritious food and clean water, and allow people to adopt healthy diets and fully participate in physical activity. Similarly, States should revise planning policies that inequitably allocate communal spaces for public recreation and exercise, or that concentrate infrastructure for active transport, such as walking, cycling and skating, in affluent areas.

18. Finally, States should refrain from interfering with athletes' health rights by means of laws, policies or programmes involving forced or coercive medical treatments or experimentation, such as doping, conducted in order to enhance sporting ability among athletes.

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[17] See general comment No. 14.

[18] WHO, *Global Status Report on Non-communicable Diseases* (2014).

[19] See General Assembly resolution 66/2.

[20] See www.who.int/healthpromotion/conferences/8gchp/8gchp_helsinki_statement.pdf.

Protect

19. States should ensure full compatibility between sport policies, rules, programmes and practices, and human rights law, and should intensify their efforts to prevent systemic and ad hoc rights violations perpetrated by third parties. States should develop policies that incorporate international human rights standards, and should require public and third-party providers to adopt policies that are compatible with human rights standards, making funding or support contingent on that adoption, where appropriate. For example, sport policy programmes could require national sports organizations to respect the Convention on the Rights of the Child and to conduct mandatory monitoring of child rights in sports.

20. States should also provide training and materials to sports organizations on the adoption of rights-based approaches to health in the sporting context. These should include information on protection against physical, sexual and psychological abuse, exploitation and violence, on protection against discrimination and on gender equality, on appropriate limits for intensive training, especially for children and young people, on protection against coercive/forced doping and medical procedures, and on other rights connected to the right to health and sport, such as young athletes' right to an education.

21. Protection of the human rights of those participating in sport and physical activity is a State obligation under the right to health. There are numerous documented instances of health rights abuses within competitive sport: the General Assembly has acknowledged with concern "the dangers faced by sportsmen and sportswomen, in particular young athletes, including, inter alia, child labour, violence, doping, early specialization, overtraining and exploitative forms of commercialization, as well as less visible threats and deprivations, such as the premature severance of family bonds and the loss of sporting, social and cultural ties".[21]

22. Such practices also exist at the amateur level but are less well researched. For example, injury, illness and violence arising in the context of organized children's sport is frequently documented, but the extent to which it occurs globally is still unknown.[22] In some instances, breaches of the health rights of athletes occur with the knowledge or tacit consent of the State, especially in the competitive context. However, such violations of athletes' human rights are rarely addressed in a systematic manner, probably because of the positive image of sports.[23]

23. Many rights violations stem from a "winning at all costs" mentality that is tolerated or actively encouraged by States, particularly in competitive sporting contexts. A certain level of "healthy" sporting competition can foster participation, encourage individuals to strive for excellence, empower women and girls, and in many instances, increase individual enjoyment. However, appropriate safeguards should be implemented to ensure the protection of all amateur and professional athletes. As a broad, overarching principle, States should create an inclusive sporting environment wherein an optimal level of competitiveness is reached, and those participating in sports are protected from the harmful effects of overly competitive environments.

24. States should provide mechanisms through which normative review and legal enforcement, as pertains to alleged health rights violations, can occur. There should be no barrier to the investigation and prosecution of such incidents, as competitive and amateur sports are as subject to international human rights law as any other activity undertaken within a State's jurisdiction. As an interim option or an alternative, it may be necessary or

[21] See General Assembly resolution 58/5.
[22] UNICEF, *Protecting Children from Violence in Sport*.
[23] Paulo David, *Human Rights in Youth Sport* (London, Routledge, 2005).

most effective for States to create independent complaints and monitoring mechanisms, potentially using existing human rights institutions, that people can utilize in the event of an alleged breach of their right to health in the sporting context. These could allow for redress and remedy through alternative dispute resolution mechanisms, such as mediation and arbitration. However, this should not preclude the referral of serious violations to national courts, especially allegations of criminal activity, which must be treated as criminal activity as in any other setting.

Fulfil

25. States should take action to ensure that sufficient resources and infrastructure are devoted to enabling people to access and participate in sport and physical activity, as part of a broader strategy to encourage the adoption of healthy lifestyles. Three primary steps must be taken by States in this regard. Firstly, States should immediately include the facilitation and promotion of physical activity and healthy lifestyles in national planning, if this has not already been done. Secondly, quality physical education programmes, including in school and health-care settings, should be established (or updated) in accordance with human rights standards. Finally, progressive implementation, expansion and/or improvement of goods, facilities, services and information provision relevant to sport and healthy lifestyles should be undertaken, subject to resource constraints.

26. The incorporation of physical activity and healthy lifestyles into existing national health plans, or the development of such a plan, should be a foremost priority of States under the right to health, as a core obligation that is not subject to the principle of progressive realization, alongside non-discrimination. The Global Strategy on Diet, Physical Activity and Health encourages States to build on existing national strategies and action plans concerning aspects of diet, nutrition and physical activity, and to create a national coordinating mechanism that addresses diet and physical activity within a comprehensive plan for preventing non-communicable diseases and promoting health.[24] However, in many countries, there is alarmingly little planning: WHO has noted a paucity of national physical activity guidelines in low- and middle-income countries, and has confirmed that the public health significance of physical activity warrants the development of such guidelines.[25] Such guidelines must be developed in reference to prevailing evidence and good practices in the region concerned.

27. Multisectoral collaboration can be a successful means of achieving national physical activity goals; for this, communication and cooperation between different parts of the government is vital. Some States have achieved multisectoral collaboration through formal cooperation agreements between relevant ministries; for example, Greece reports using a "cooperation protocol" between the ministries concerned in order to implement common physical activity interventions in schools, the workplace and public places. What is appropriate will vary according to national circumstances, but some framework or mechanism must be established in order to ensure that the collaboration occurs.

28. The importance of multisectoral collaboration is reflected in the Helsinki Statement on Health in All Policies, and in the 2011 Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases wherein the General Assembly encouraged implementation of the Global Strategy on Diet, Physical Activity and Health through the introduction of policies and actions aimed at promoting healthy diets and increasing physical activity in the entire population, in all aspects of daily living. The General Assembly also noted that implementation of the Global

[24] WHO, *Global Strategy on Diet, Physical Activity and Health.*
[25] WHO, *Global Recommendations on Physical Activity for Health.*

Strategy on Diet, Physical Activity and Health in this way could include giving priority to regular physical education classes in schools, and the increased availability of safe environments in public parks and recreational spaces to encourage physical activity.[26]

29. The provision of education is a State obligation under article 13 of the International Covenant on Economic, Social and Cultural Rights, which should include physical education. The right of the child to education is also recognized in article 28 of the Convention on the Rights of the Child. Physical education is not limited to people of school age, however; it is confirmed in the International Charter of Physical Education, Physical Activity and Sport that every human being has a right to physical education, and that physical education, activity and sport programmes must inspire lifelong participation. This is bolstered by other human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women which explicitly obliges States to provide women with the same opportunities to participate actively in physical education as men.[27] Accordingly, all States should take steps to update school curricula and other relevant policies to ensure compatibility with the relevant human rights instruments and the International Charter of Physical Education, Physical Activity and Sport. States should also take steps to facilitate or provide access to physical education for people who are not enrolled in formal education.

30. In considering the other steps necessary to increase participation in physical activity, State obligations to facilitate, provide and promote the right to health can be considered separately.

Facilitate

31. States should implement measures to facilitate the use of sporting goods, services, information and facilities. This facilitation can be considered in terms of availability, accessibility, acceptability and quality, and may take the form of economic assistance, or direct interventions or training. Consultations carried out for the present report suggest that, where appropriate, a State might financially partner with private entities to build facilities, in order to improve availability in certain areas or regions. Or, where accessibility is constrained on financial grounds for certain members of the population, subsidized access to sporting goods, services and facilities should be considered. A State might achieve this by implementing a voucher system (Georgia) or by adopting a policy allowing free or low-cost access to group sport or classes (Israel). Other interesting examples include waiving taxation on sporting goods (Brunei) and implementing taxation exemptions for bicycle use (Finland). Finally, States may take steps to improve both the acceptability and the quality of existing resources, by training and sensitizing personnel at sporting facilities within its jurisdiction and by engaging the populations concerned in the design, monitoring and evaluation of sports-related policies, programmes and services.

32. States can take other steps to facilitate the adoption of healthy lifestyles, with a view to ensuring policy coherence and effectiveness. One such measure is the adoption of laws limiting the marketing of tobacco and unhealthy food and beverages in the context of school-based sporting activities and at professional sporting events. Food advertising is frequently geared towards children, and much of it concerns foods with high levels of saturated fat, trans-fatty acids, sugar or salt (referred to hereinafter as "unhealthy foods"); this influences children's preferences, purchase requests and consumption patterns.[28] WHO has recommended that settings where children gather should be free from all forms of

[26] See General Assembly resolution 66/2.
[27] See art. 10 (g).
[28] See General Assembly resolution 66/2.

marketing of unhealthy foods; this includes settings in which sporting or cultural activities for children are held.[29] Regulating or banning the advertising, promotion and sponsorship of tobacco[30] and alcohol[31] in these contexts is also recommended by WHO.

33. States should ban the advertising, promotion and sponsorship of all children's sporting events, and other sporting events which could be attended by children, by manufacturers of alcohol, tobacco, and unhealthy foods. States should create guidelines that either restrict altogether, or minimize the impact of, the marketing of unhealthy foods, alcohol and tobacco in the context of all sporting events.

Provide

34. The construction and maintenance of adequate public spaces for active transport and participation in physical activity is a core State responsibility. Provision of these public goods facilitates equitable adoption of healthy lifestyles, as individuals require few resources to utilize such facilities. For example, States should ensure that safe walking and cycling paths are available and accessible to all people to encourage increased pedestrian and cycling activity for transport and exercise. Similarly, States should provide "green spaces" for people to play sport, exercise, and engage in recreation, especially in the urban context. This is in accordance with the International Charter of Physical Education, Physical Activity and Sport, which confirms that adequate and safe spaces, facilities and equipment are essential to quality physical education and activity, and sport (art. 8).

35. States should also make provision for groups or individuals that are unable to realize their right to health by the means at their disposal. In relation to sport and healthy lifestyles, what this entails will depend on country-specific circumstances and resources. Such steps could include establishing State-run sporting facilities that cater to people unable to access private facilities, or directly sponsoring team-based sports for key populations and groups in vulnerable situations, in order to improve the availability and accessibility of physical activity for those people.

36. Encouragingly, some States provide subsidized or free access to sporting goods, services and facilities to certain groups in society. Sports activities for people with disabilities are free in Azerbaijan, in accordance with a resolution of the Cabinet of Ministers; similarly, in Bosnia and Herzegovina, access to sports camps for children is free. The Special Rapporteur recommends the adoption of similar approaches elsewhere, subject to the needs of the population and resource availability.

Promote

37. The obligation to promote the right to health requires States to take actions to create, maintain and restore the health of the population. In order to fulfil this obligation, a State must: (a) foster recognition of factors favouring positive health results; (b) ensure that services are culturally appropriate; (c) disseminate appropriate information; and (d) support people in making informed choices about their health.

38. States should engage in participatory and transparent research, monitoring and evaluation in order to determine the strategies that most effectively foster full and equal participation in sport and the adoption of healthy lifestyles and improve the health of the populace.

[29] WHO, *Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children* (2010).
[30] WHO, *Banning Tobacco Advertising, Promotion and Sponsorship* (2013).
[31] WHO, *Global Strategy to Reduce the Harmful Use of Alcohol* (2010).

39. The needs, experiences and preferences of target populations must be considered when formulating policies or programmes concerning sport and healthy lifestyles, and in constructing facilities. People are entitled to participate in the formulation of policies and programmes that will have a direct impact upon them, and their involvement must be secured from the design stage of any intervention. Moreover, as health behaviour is the product of social structures and practices, interventions should be adapted for specific groups based on the meaning that they attach to healthy lifestyles, in order to ensure relevance and effectiveness.

40. States should take steps to disseminate information to populations on sport and healthy lifestyles. Such dissemination takes two primary forms: physical education, and awareness-raising through the media and other channels. States should raise awareness of the importance of physical activity (outside of formal education mechanisms) and should encourage individuals to participate through public health campaigns. Again, what is appropriate will vary based on the jurisdiction, but encouraging examples are provided by certain States, such as mass exercise on World Day for Physical Activity to promote participation in sport.

41. Finally, States should do more than simply disseminating information on sport and healthy lifestyles to the populace. Steps must be taken to support the adoption of healthy lifestyles, by creating mechanisms through which healthy choices become the easier and preferred option and poor lifestyle choices are avoided. This can occur through structural changes to environments, for example, which create inexpensive and safe active transport options.

IV. Sport and healthy lifestyles and the right to health of key populations and groups

A. Children[32]

42. Specific obligations accrue under the right to health in relation to children and the adoption of healthy lifestyles. Pursuant to article 12 (2) (a) of the International Covenant on Economic, Social and Cultural Rights, States parties are required to take steps necessary to achieve the healthy development of the child; this includes steps to facilitate the participation of children in safe and inclusive play and sport. Moreover, this is consistent with the Convention on the Rights of the Child, which recognizes the right of children to engage in play and recreational activities and requires States to encourage the provision of appropriate and equal opportunities for recreational and leisure activity (art. 31).

43. The benefits of participation in physical activity and sport and the adoption of healthy lifestyles can be especially pronounced for children. Physically active young people have higher levels of cardiorespiratory fitness, better metabolic profiles, improved bone health and fewer symptoms of anxiety and depression. Accordingly, WHO has recommended that children and adolescents should participate in 60 minutes of cumulative

[32] The present report defines "children" as all persons below the age of 18, unless majority is attained earlier under applicable State law, in accordance with art. 1 of the Convention on the Rights of the Child.

physical activity daily.[33] Among adolescents, there is a correlation between participation in organized sport and an increased likelihood of meeting physical activity targets.[34]

44. The benefits of sport and physical activity in relation to holistic development must also be recognized. The United Nations Children's Fund (UNICEF) has identified sport as a tool to help overcome children's social exclusion. Children who have suffered violence and abuse are less likely to participate in organized team sport.[35] However, where efforts are made to include marginalized children, the benefits of participation in sport include changing community perceptions of the capabilities of particular groups, and creating self-empowerment by changing children's perceptions of themselves and their abilities.[36]

45. States should first respect the right to health through the avoidance of discrimination against children as regards their participation in sport and physical activity. Goods, services, facilities and information relating to sport must be equally available to all children, and be safe and appropriate to their age and ability; additionally, provision should be made for children to access separate facilities where it is unsafe for them to use adult facilities.

46. Competitive sport is notable for being one of the few remaining areas within society that has largely failed to integrate human rights standards pertaining to children.[37] In many sports, training must commence at a very early age in order for athletes to be competitive when reaching majority. Eating disorders are more prevalent in adolescents than in the general population, and are particularly prevalent among top athletes.[38] Furthermore, a drift towards professionalism in competitive sport has been associated with compromises of the rights of child athletes, ranging from physical and emotional abuse through to doping, sexual violence and even the trafficking of child and adolescent athletes.[39] The true extent of these problems is unknown, due to challenges in data collection and insufficient research.

47. States should take steps to establish frameworks and minimum standards of care and protection for children participating in sports to protect them from the risks of abuse, overtraining and violence and should promote guidelines for healthy participation in sport at all levels for minors. They should ensure that children and adolescents have recourse to effective, safe and child-sensitive counselling, reporting and complaints mechanisms, in the event of health rights violations. Moreover, children should only engage in intensive training programmes and/or professional sport at ages when their cognitive development is sufficient for them to understand the concept and implications of competition, in order to avoid negative impacts on their early development.

48. International sporting actors must take more action to ensure that the rights of children participating in their competitions or events are protected. Presently, there are no consistent minimum age limits for competing in international adult sporting events, nor is there any coordinated action regarding the international movement of children and adolescents for participation in high-level or professional sport. Responsibility for the well-

[33] WHO, *Global Recommendations on Physical Activity for Health*.

[34] Stewart Vella and others, "Associations between sports participation, adiposity and obesity-related health behaviors in Australian adolescents", *International Journal of Behavioral Nutrition and Physical Activity*, vol. 10, No. 1 (October 2013).

[35] UNICEF, *Protecting Children from Violence in Sport*.

[36] UNICEF, "Inclusive sport", 15 May 2015. Available from www.unicef.org/sports/23619_57597.html.

[37] Paulo David, *Human Rights in Youth Sport*.

[38] Marwan el Ghoch and others, "Eating disorders, physical fitness and sport performance: a systematic review", *Nutrients*, vol. 5, No. 12 (2013).

[39] UNICEF, *Protecting Children from Violence in Sport*.

being of young athletes is often delegated to States or national sporting organizations. International sporting actors should standardize policies and protocols concerning the participation of children in high-level or professional sport in order to protect the children's health and other human rights.

49. Finally, States should take steps to fulfil the right to health of all children by ensuring safe access to sport and physical activity and physical education, and through provision of the goods, services, facilities and information necessary to enable all children's equitable participation.

B. Lesbian, gay, bisexual, transgender and intersex people

50. Historically, sport has often involved forms of "hegemonic masculinity": boys and men have frequently been enabled or encouraged to exhibit aggressive, violent or discriminatory behaviour in competitive sport, including sexism, misogyny, homophobia and transphobia.[40] A welcome shift in this paradigm has occurred in a number of regions and countries where homophobia has decreased, where this has included the area of sports. Nevertheless, levels of homophobia, transphobia, and discrimination against intersex people remain high in most countries. Those who are perceived to fall outside dominant gender and heteronormative standards, including lesbian, gay, bisexual, transgender and intersex people, continue to face discriminatory treatment and restrictions in sport, including discrimination, harassment and violence, and a lack of safe and welcoming spaces for participation.

51. Numerous issues arise in respect of persons who are lesbian, gay or bisexual in the context of sport. In a recent six-country survey, 80 per cent of respondents reported having witnessed or experienced homophobia in sport, and nearly 20 per cent of gay men reported having been assaulted during sports activities.[41] In certain jurisdictions, lesbian athletes have been harassed and subjected to violence, including "corrective rape", on the basis of their sexual orientation.

52. Acts of violence, discrimination and marginalization represent human rights breaches that prevent individuals from achieving the highest attainable standard of health. More must be done to secure the full and safe participation of lesbian, gay and bisexual people in sport and physical activity. States should decriminalize homosexuality and repeal other laws used to arrest and punish individuals on the basis of their sexual orientation, and should protect individuals by implementing and enforcing anti-discrimination laws,[42] including in sport.

53. Moreover, sex segregation policies have led to multiple rights violations in sport. Sex segregation has historically been justified on the basis of safety and fairness, rooted in assumptions of male physical superiority. Various legal decisions have noted that this is a generalization and have granted individual girls and women the right to compete in male sporting competitions — although not vice versa.[43] Although it is important to preserve

[40] Jennifer Hargreaves and Eric Anderson, eds., *Routledge Handbook of Sport, Gender and Sexuality* (Oxford, Routledge, 2014).

[41] Erik Denison and Alistair Kitchen, *Out On The Fields: The First International Study on Homophobia in Sport* (2015).

[42] Paulo David, *Human Rights in Youth Sport*.

[43] Erin Buzuvis, "Transgender student-athletes and sex-segregated sport: developing policies of inclusion for intercollegiate and interscholastic athletics", *Seton Hall Journal of Sports and Entertainment Law*, vol. 21, No. 1 (2011).

spaces for girls and women to confidently participate in sport, this should not result in exclusion of others, such as transgender people.

54. States should identify groups that are currently excluded from sport and physical activity, and through participatory mechanisms, create an inclusive culture wherein lesbian, gay, bisexual, transgender and intersex people and other historically excluded groups and individuals can fully and safely participate in sport.

Intersex people

55. Current and historic policies have resulted in intersex people — those born with sex characteristics that do not fit with typical binary sex categorization — experiencing multiple rights violations. Sex testing has frequently been conducted to avoid the apparent threat of "sex fraud" (participating under an assumed gender to obtain a competitive advantage).[44] However, no single test "determines" gender. In the recent past, women athletes have undergone chromosomal testing, only to discover that they do not possess two X chromosomes. This has led to stigmatization and to spurious exclusion from competitive sport.[45]

56. Recently, certain international and national sporting federations have instead introduced policies banning women with testosterone levels exceeding a certain threshold from participating in competitive sport. However, there is insufficient clinical evidence to establish that those women are afforded a "substantial performance advantage" warranting exclusion.[46] Although currently suspended, following the interim judgement in *Chand v. Athletics Federation of India and the International Association of Athletics Federations*,[47] these policies have led to women athletes being discriminated against and forced or coerced into "treatment" for hyperandrogenism. In fact, a number of athletes have undergone gonadectomy (removal of reproductive organs) and partial cliteroidectomy (a form of female genital mutilation)[48] in the absence of symptoms or health issues warranting those procedures.[49]

57. Sporting organizations must implement policies in accordance with human rights norms and refrain from introducing policies that force, coerce or otherwise pressure women athletes into undergoing unnecessary, irreversible and harmful medical procedures in order to participate as women in competitive sport. States should also adopt legislation incorporating international human rights standards to protect the rights of intersex persons at all levels of sport, given that they frequently report bullying and discriminatory behaviour,[50] and should take steps to protect the health rights of intersex women in their jurisdiction from interference by third parties.

Transgender people

58. Participation in professional sport is often deliberately or effectively denied to transgender people, and people of non-binary gender. There remains uncertainty regarding

[44] J.C. Reeser, "Gender identity and sport: is the playing field level?" *British Journal of Sports Medicine*, vol. 39, No. 10.

[45] Erin Buzuvis, "Transgender student-athletes…"

[46] J.C. Reeser, "Gender identity and sport: is the playing field level?"

[47] CAS 2014/A/3759, Court of Arbitration for Sport.

[48] J.C. Reeser, "Gender identity and sport: is the playing field level?"

[49] Rebecca Jordan-Young, Peter Sönksen and Katrina Karkazis, "Sex, health and athletes", *British Medical Journal*, vol. 348.

[50] Tiffany Jones and others, *Intersex: Stories and Statistics from Australia* (Open Book Publishers, 2016).

"classification" by sports bodies of persons as male or female within sex-segregated sport — for those undergoing gender transition through clinical treatment and for those who are not — as well as concerns with regard to the arbitrary nature of such classifications. The barriers that this presents to participation are unwarranted and unfair.

59. Encouragingly, the recent consensus statement of the International Olympic Committee on sex reassignment and hyperandrogenism addresses this issue. However, consensus should be reached among all international sporting bodies and national governments, in consultation with transgender organizations, on participation by transgender people and non-binary people in sporting competitions. Policies must reflect international human rights norms, should not exclude transgender people and non-binary people from participation and should not require irrelevant clinical data or unnecessary medical procedures as a precondition to full participation.

60. At the amateur level, sporting facilities and teams can be hostile spaces for transgender athletes, including non-binary people. Barriers include poorly designed changing rooms, requirements to wear clothing that might cause individual discomfort or hinder bodily movement, and restrictions on the use of sex-segregated bathrooms.

61. The repeal of laws criminalizing transgender people on the basis of their gender identity or expression, and the legal recognition of gender identity based on self-identification (without abusive requirements) is a prerequisite for transgender people to access sports and enjoy healthy lifestyles. States, sporting organizations and other actors should adopt anti-discrimination policies that permit all persons to participate in amateur sport on the basis of their self-identified gender. Practical steps to create welcoming spaces for participation in sport and physical activity for transgender people and non-binary people could include the installation of appropriate changing rooms, the sensitization of sporting communities, and the enforcement of anti-discrimination laws in the sporting context.

C. Women

62. In addition to the rights outlined in the International Covenant on Economic, Social and Cultural Rights, article 13 of the Convention on the Elimination of All Forms of Discrimination against Women guarantees women equal rights to participate in recreational activities, sports and all aspects of cultural life, without discrimination. This is reinforced by the obligation under article 10 of the Convention on the Elimination of All Forms of Discrimination against Women to take all appropriate measures to eliminate discrimination against women in respect of education, ensuring to women the same opportunities as to men to participate actively in sports and physical education. Article 5 of the same Convention also requires States to eliminate stereotyped roles for men and women, which equally applies in the field of sport and physical activity.

63. Securing the right of women to participate in physical activity can improve women's health. Women experience certain health risks at higher rates than men at various points in their lifespan, which are mitigated by exercise. For example, regular weight-bearing exercise has been shown to reduce the incidence of osteoporosis, a bone disease experienced primarily by postmenopausal women.[51] Risks of other illnesses suffered almost exclusively by women, such as breast cancer, can also be modified through the promotion of physical activity and healthy lifestyles.

[51] Tracey Howe and others, "Exercise for preventing and treating osteoporosis in postmenopausal women", *Cochrane Database of Systematic Reviews*, Issue 7.

64. Women constitute half of the world's population and are a highly heterogeneous group; health risks are not shared equally among all women. Overweight and obesity are increasingly prevalent among adolescent girls from highly urbanized areas, certain ethnic minorities, and those living with disabilities. Moreover, adolescent girls are particularly vulnerable to anxiety and depressive disorders, in comparison to boys.[52] Accordingly, there is a significant need to engage at-risk women and girls in physical activity and sport, particularly at points when activity levels are most likely to drop steeply.

65. The obligation to respect the right to health requires effort in order to combat entrenched discrimination against women in the field of sport and physical activity. Both at the professional and the amateur levels, there remains a worrying gender differential in participation in sport.

66. In some instances, unequal participation of women in sport is directly sanctioned by State policies, in a clear violation of the obligation to respect the right to health. In some countries, nearly all State-supported sports clubs and private gymnasiums are reportedly closed to women. Although there has been a positive shift in the attitude to professional sport recently in certain parts of the world, there is still a strong cultural assumption that women will not engage in exercise. States should ensure that women can exercise their right to participate in and to attend sporting events, as well as to receive physical education.

67. Elsewhere, pernicious practices and beliefs hinder women's equal participation in sport. Despite repeated declarations and calls for action on equality in sport since the 1994 Brighton Declaration on Women and Sport,[53] women's sport remains deprioritized and heavily underfunded globally. Among professional athletes, there are significant disparities between men and women in respect of incomes and prize money. One study found that men receive more prize money than women in 30 per cent of sports.[54] Moreover, men's sport dominates media reporting.[55, 56]

68. These examples reflect deep-seated bias towards men's sport, which diminishes the opportunities for women in sport at all levels. States and other actors must act to shift public consciousness away from a male-dominated sporting culture. States should review their laws, policies and programmes, and amend or repeal those that discriminate against women and girls and prevent them from participating in sport on an equal basis with men.

69. It is encouraging that international sporting bodies are taking steps to improve the status of women in sport. For example, the International Olympic Committee created a commission on women and sport in 1995, and in 2004 the Olympic Charter was amended in recognition of the need for action on women and sport; in addition, various regional intergovernmental bodies have promulgated recommendations and policies concerning sport and gender equity.[57]

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[52] R. Bailey, I. Wellard and H. Dismore, Girls' participation in physical activities and sports: benefits, patterns, influences and ways forward (2005).

[53] International Working Group on Women and Sport (1994).

[54] BBC, "Prize money in sport: BBC Sport study". Available from www.bbc.com/news/uk-29665693.

[55] Cheryl Cooky, Michael Messner and Robin Hextrum, "Women play sport, but not on TV", *Communication and Sport*, vol. 1, No. 3.

[56] Claire Packer and others, "No lasting legacy: no change in reporting of women's sports in the British print media with the London 2012 Olympics and Paralympics", *Journal of Public Health*, vol. 37, No. 1.

[57] Sport for Development and Peace International Working Group, "Sport and gender: empowering girls and women", in *Harnessing the Power of Sport for Development and Peace: Recommendations to Governments* (2008).

70. Specific issues also arise for women in connection with sport and the obligation to protect. There is an alarming broader trend within certain societies towards the controlled feminization of women in the context of sport, including through violence and reprisals against female sportspeople. Women in certain countries, simply by engaging in sport and physical activity, are seen as challenging traditional notions of gender roles in society and become victims of hostility and ostracism by the general population.

71. These attempts to control the behaviour of women through violence, and to dictate what an acceptable body image and acceptable activities are, represent clear violations of their human rights. States should take steps to protect the rights of female athletes, for example through the enforcement of criminal laws against perpetrators of violence and through the development of sensitization and education initiatives to combat negative images and attitudes around women's participation in exercise and sport.

72. States may not directly deny women access to sporting facilities, as this would be in breach of the obligation to fulfil. Nevertheless, it is the case that, in some States, there is a failure to create conditions wherein women can participate effectively in sport and physical activity. Traditional cultural or societal norms may mean that women cannot exercise in public spaces, or are inhibited in doing so. Some women may even risk physical harm or assault when exercising in public. States should take active steps to create safe, gender-sensitive spaces in which women can exercise, appropriate to the country context; these may range from the installation of secure changing facilities to the enforcement of criminal laws that are breached in the sporting context.

73. Moreover, as women's motivations for engaging in exercise often differ from those of men, greater attention to acceptable forms of organized sport may increase female participation. Research has indicated that women frequently place more importance on social aspects of physical activity than on performance outcomes.[58] In order to promote physical activity and sport, States should inform their policies with research, and adopt best practices adapted to the country and to the preferences of women, with meaningful participation by women in the design, implementation, monitoring and evaluation of policies and programmes.

D. Elderly people

74. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights recognized the importance of an integrated approach to the health of older persons, including preventive, curative and rehabilitative health treatment. Promotion of participation in sport and physical activity is among the most cost-effective interventions that States can undertake in order to prevent morbidity and mortality among older persons and to ensure that they achieve the highest possible standards of physical and mental health.

75. Physically active older people have lower rates of all-cause mortality than their sedentary counterparts, and experience many health benefits, including healthier body mass and improved bone health, and lowered risk of coronary heart disease, high blood pressure, diabetes and cancer. Moreover, regular exercise plays an important role in preventing depression and cognitive decline.[59]

76. In addition to the above-mentioned biomedical benefits, participation in organized sport may have significant benefits for older adults as regards increased social interaction

[58] VicHealth, "Female participation in sport and physical activity" (2015).
[59] WHO, *Global Recommendations on Physical Activity for Health*.

and connectedness. Moreover, sport can be used as a tool to promote "active ageing" — elderly people being active and engaged in society — to combat negative and inaccurate images of the elderly that portray ageing as an inevitable and irreversible decline in function.

77. States should respect the right to health of elderly people by refraining from discriminating in the form of denying access to conditions enabling them to live healthy lifestyles, which includes their access to sporting goods and facilities. States should also protect the right to health of the elderly by creating complaint and recourse mechanisms for those whose rights have been violated and by sensitizing third parties to the needs and abilities of the elderly in the sporting context. Finally, States should fulfil the right to health of the elderly by facilitating or providing goods, services, facilities and information, in the area of sport and exercise, that are available, acceptable, accessible and of high quality.

E. Persons with disabilities

78. Persons with disabilities should have access to, and benefit from, medical and social services that enable them to become independent, prevent further disabilities and support social integration.[60] Moreover, persons with disabilities must be provided with rehabilitation services enabling them to reach and sustain optimum levels of independence and functioning.[61] Furthermore, the Committee on Economic, Social and Cultural Rights has confirmed that private providers of services and facilities, as well as the public health sector, must comply with the principle of non-discrimination. These principles are echoed in article 25 of the Convention on the Rights of Persons with Disabilities, which provides for the right of enjoyment of the highest attainable standard of health for people with disabilities, without discrimination on the basis of disability.

79. Moreover, under article 30 (5) of the Convention on the Rights of Persons with Disabilities, States are required to take appropriate measures to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities. These measures include encouraging and promoting the participation of persons with disabilities in mainstream sporting activities at all levels, ensuring that persons with disabilities can organize, develop and participate in disability-specific sporting and recreational activities, and ensuring that persons with disabilities have access to sporting venues and services. The right of children with disabilities to have equal access to play, recreation and leisure and sporting activities is explicitly acknowledged in the Convention. In addition, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provide guidance on the types of interventions required in relation to sport and healthy lifestyles for persons with disabilities (see rule 11).

80. As physical inactivity is associated with deterioration in the physical and psychological health of persons living with disabilities,[62] participation in sport and physical activity may yield more immediate benefits for them than for the rest of the population — such as improved functional independence and overall quality of life — beyond the amelioration of long-term health risks. Additionally, persons living with disabilities are at higher risk of non-communicable diseases.[63] For these reasons, investment in achieving

[60] Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities.

[61] See E/1995/22.

[62] J. Larry Durstine and others, "Physical activity for the chronically ill and disabled", *Sports Medicine*, vol. 30, No. 3.

[63] WHO, *World Report on Disability* (2011).

equitable health outcomes for this population subgroup is particularly important. However, persons with disabilities are consistently less likely to engage in physical activity than others,[64] and children living with disabilities have been identified as a group requiring particular attention.[65]

81. Encouragingly, sport and physical activity for people with disabilities has increasingly moved away from a "medical-therapeutic" focus on exercise as rehabilitation or treatment[66] towards a more positive, inclusive paradigm incorporating human rights, where attention is focused on the ability and agency of people with disabilities, on better health, and on empowerment and the attainment of new skills.[67] The increased participation of people living with disabilities also has wider societal benefits; it dismantles images of people with disabilities as being passive, inactive and unable to participate, and can potentially increase social cohesion and inclusion through the removal of negative stereotypes.

82. Although it is established in the Convention on the Rights of Persons with Disabilities that States should ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities, States are only obliged to encourage and promote the participation, to "the fullest extent possible", of persons with disabilities in mainstream sporting activities. What "the fullest extent possible" means in the context of professional and amateur sport is debatable, and may need further attention.

83. To date, it seems that the appropriateness of participation in mainstream sport at the professional level has been determined on a case-by-case basis. For example, accommodations can be made for persons with disabilities to participate in sports such as golf, which do not alter the fundamental nature of the sport in question, and therefore should be undertaken to avoid discrimination.[68] In situations where accommodations cannot be made without fundamentally changing the nature of the sport, the question of participation of persons with disabilities remains uncertain, and should be further examined by international organizations in consultation with persons with disabilities, to assist States in promulgating relevant policies.

84. Regarding amateur sport, the physical accessibility of mainstream sporting facilities, goods and services should be ensured, for example through the incorporation of appropriate infrastructure in venues. However, physical access can equally be impeded through laws and policies. In particular, persons with psychosocial disabilities may face barriers in accessing what they are entitled to under the right to health, and must be given access to sporting facilities, goods and services without discrimination. This may not necessarily require investment in infrastructure; rather, a focus on developing acceptable services and sensitizing service providers may be required.

[64] James Rimmer and Alexandre Marques, "Physical activity for people with disabilities", *The Lancet*, vol. 380, No. 9838.

[65] WHO, Report of the Commission on Ending Childhood Obesity (2016).

[66] Ralph Richards, "Persons with disability and sport" (3 February 2016).

[67] Sport for Development and Peace International Working Group, "Sport and persons with disabilities", in *Harnessing the Power of Sport for Development and Peace: Recommendations to Governments* (2008).

[68] See *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 121 S. Ct 1879 (2001).

V. Obligations of non-State actors regarding sport and healthy lifestyles and the right to health

85. Although non-State actors do not directly accrue obligations under the right to health as expressed in the International Covenant on Economic, Social and Cultural Rights, they nevertheless incur indirect responsibilities regarding realization of the right. Strong leadership from non-State actors through the incorporation of human rights standards into operations pertaining to sport and healthy lifestyles is important in promoting realization of the right to health.

86. Civil society organizations and national human rights institutions should advocate for the inclusion of sport and healthy lifestyles in relevant national policies, and should ensure that the voices of marginalized and excluded groups, including children, are part of the policy-making process. National human rights institutions can also assist States through information-gathering, monitoring and evaluation.

87. Private entities, including transnational corporations, should ensure that their operations do not undermine the realization of individual health rights. In particular, companies that produce tobacco, food or beverages should abide by industry- or Government-led regulations on marketing products to children in the sporting context. Companies involved in major sporting events must also ensure that their operations meet human rights standards, and must fully implement the Guiding Principles on Business and Human Rights[69] — a responsibility shared with international sporting bodies.

88. A number of entities involved in the organization and operation of major sporting events and competitions incur indirect rights obligations: the International Olympic Committee, the International Paralympic Committee, and the Fédération internationale de football association (FIFA), among others. These bodies have a vital role to play in implementing policies and activities aimed at realizing the right to health in the sporting context. Enhancement of protection of the human rights of athletes should not be perceived as a threat to the continued operation of major events but rather as a means of increasing the confidence of athletes and the public in the integrity of sporting institutions.[70]

89. It is encouraging that human rights are increasingly emphasized in the operations of these organizations, for instance through the International Olympic Committee code of ethics. The recent appointment of an independent human rights expert to review the policies of FIFA in relation to the Guiding Principles on Business and Human Rights is encouraging,[71] as is the implementation by FIFA in 2010 of regulations on the status and transfer of players. However, more must be done to ensure that the right to health of athletes participating in these events is secured, particularly that of children.

90. Moreover, broader human rights concerns exist in regard to major sporting events, including health risks faced by workers on major event infrastructure projects, such as high rates of avoidable morbidity and mortality.

91. Given the human rights violations occurring in the context of these events, and evidence that the interest generated by mega sporting events and professional sport does not appear to translate into mass participation in sport or physical activity,[72] more should be

[69] See A/HRC/17/31.

[70] Paulo David, *Human Rights in Youth Sport*.

[71] FIFA, "FIFA to further develop its human rights approach with international expert John Ruggie" (14 December 2015).

[72] Pedro Hallal and others, "Physical activity: more of the same is not enough", *The Lancet*, vol. 380, No. 9838.

done to ensure that the human rights of everybody who is connected with major sporting events are protected and that these events are not merely held as a spectacle.

VI. Good-practice approaches to sport and healthy lifestyles

92. Specific laws, policies, programmes and interventions embodying human rights standards should be implemented to enable and encourage individuals to participate in sport and physical activity and achieve the highest attainable standard of health. However, selecting appropriate programmes is challenging, given that there is insufficient robust research for a conclusion to be drawn regarding the effectiveness of many programmes involving sport or physical activity, or the research that does exist suggests that many programmes are ineffective. Systematic reviews have detected an absence of high-quality evidence that could support interventions implemented through sporting organizations to promote healthy behaviour change[73] and interventions delivered by sporting organizations to increase participation in sport.[74] A recent systematic review of community-wide interventions for increasing physical activity found minimal evidence of higher rates of participation in physical activity at the population level.[75]

93. However, current research indicates that certain successful interventions share specific common elements. Essential prerequisites, identified by WHO, to large-scale physical activity programmes in developing countries include high-level political commitment/a guiding national policy, funding, stakeholder support, and a coordinating team.[76] Moreover, WHO and its regional offices have developed surveillance tools and materials to promote physical activity which can guide national governments in strengthening and supporting efforts to increase participation.[77]

94. In the consultations connected with the present report, new initiatives reported by States indicated great interest and creativity in regard to the promotion of sport and healthy lifestyles. These included a "Health Academy" programme incorporated into a basic health-care scheme (Brazil); the removal of taxes on sporting goods (Brunei and Mauritius); frameworks for the inclusion of minority groups, namely Roma (Bulgaria); the recognition of sport as a cultural right (Finland); the implementation of school sports programmes, such as "Sports Olympiads" (Georgia); free public sports programmes, including Zumba dancing (Honduras), aerobics classes (Malta) and "School of Health" volunteer-led exercise classes (Slovenia); doctors "prescribing" exercise to patients (Israel); an annual "Sports Day" (Qatar); and citizen-led cycling groups (Saudi Arabia).

95. Although the above-mentioned initiatives are welcomed, there is a paucity of evidence on them. States should monitor and evaluate their programmes, policies and interventions for efficacy and for compliance with human rights standards and obligations, and should ensure that participation by the individuals affected is guaranteed in the design and revision stages.

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[73] N. Priest and others, "Policy interventions implemented through sporting organizations to promote healthy behaviour change", *Cochrane Database of Systematic Reviews*, Issue 3.

[74] N. Priest and others, "Interventions implemented through sporting organizations for increasing people's participation in sport", *Cochrane Database of Systematic Reviews*, Issue 3.

[75] P.R.A. Baker and others, "Community-wide interventions for increasing physical activity", *Cochrane Database of Systematic Reviews*, Issue 5.

[76] WHO, "Review of best practice in interventions to promote physical activity in developing countries", WHO Workshop on Physical Activity and Public Health (Beijing, October 2005).

[77] WHO Regional Office for Europe, "Physical activity strategy for the WHO European region 2016-2025".

V. Conclusions and recommendations

96. Healthy lifestyles have not traditionally been viewed as a rights issue, but their adoption is integral to realization of the right to health. Sport and physical activity are a vital part of healthy lifestyles, and States and other actors incur important obligations to maximize individual capacity to exercise and to live healthfully.

97. The obligation to respect the right to health means that no person should be prohibited from participating in sport or physical activity. States and international sporting bodies must immediately remove discriminatory laws and policies in sport, including those that hinder participation, and tackle discriminatory attitudes and practices.

98. The rights of both professional and amateur athletes, including children, must also be protected. Abuse, violence and discrimination occur too frequently within sport; States are obliged to take steps to prevent rights violations, and to provide adequate rehabilitation, redress and remedy.

99. States should incorporate sport and healthy lifestyles into their national health programming, and consider the health impacts of policies in relevant areas such as urban planning, in order to secure individual participation in sport and in active transport such as cycling. Positive steps must be taken by States to facilitate, provide and promote realization of the right to health through participation in sport. All people must be enabled to access physical education, and education around healthy lifestyles. National human rights institutions have unique roles to play in monitoring and accountability in this area.

100. Finally, private corporations and sporting organizations (including international sporting bodies) have a vital role to play in securing realization of the right to health through sport and healthy lifestyles. These entities should ensure that their policies and programmes, including those around major sporting events, do not undermine health rights, and accord with international human rights law.

101. The Special Rapporteur recommends that States:

(a) Review all laws, policies, regulations and programmes relating to sport and healthy lifestyles for compliance with human rights standards, and immediately amend or remove those that are discriminatory in nature or conflict with human rights;

(b) Ban the advertising, promotion and sponsorship of all children's sporting events, and other sporting events that could be attended by children, by manufacturers of alcohol, tobacco and unhealthy foods;

(c) Create or enforce national human rights protection mechanisms applicable to amateur and professional athletes, ensuring access to justice and redress in the event of rights violations;

(d) Create or update national health-care plans to include strategies concerning the promotion of sport and physical activity and healthy lifestyles, as part of a health in all policies approach;

(e) Create or update school-based physical education to ensure compliance with human rights standards;

(f) Take steps to secure participation in sport for all and the adoption of healthy lifestyles through:

(i) Collaboration between relevant government sectors in developing policies and programmes with health impacts;

(ii) Construction of quality infrastructure such as walking and cycling paths to facilitate equitable access to basic exercise and active transport facilities;

(iii) Measures to facilitate or provide key/at-risk populations access to sporting goods, services, facilities and information;

(iv) Research into, and promotion of, the benefits of engaging in sport and physical activity as part of healthy lifestyles;

(g) Review legislation and adopt policies to ensure that all persons, including women, lesbian, gay, bisexual, transgender and intersex people, people living with disabilities, children, the elderly and other populations that are underserved or face discrimination, are able to participate in and safely enjoy sports;

(h) Require public and third-party providers of sporting and physical activity services to adopt policies consistent with human rights standards, and create or facilitate the production of materials designed to sensitize providers regarding the adoption of a human rights-based approach;

(i) Protect the physical integrity and dignity of all athletes, including intersex and transgender women athletes, and immediately remove any laws, policies and programmes that restrict their participation or otherwise discriminate or require them to undergo intrusive, unnecessary medical examinations, testing and/or procedures in order to participate in sport;

(j) Ensure full participation of the individuals affected in the design and implementation of programmes concerning sport and physical activity;

(k) Periodically and independently monitor and evaluate initiatives concerning sport and physical activity for efficacy, and compliance with human rights standards.

102. The Special Rapporteur recommends that national human rights institutions, non-State actors and sporting bodies:

(a) Periodically and independently monitor and promote realization of the right to health in the context of sport and physical activity (national human rights institutions and civil society);

(b) Reach consensus on policies allowing for unhindered participation in high-level competitive and amateur sport by transgender and intersex people (international sporting bodies);

(c) Remove any policies that require women athletes, including intersex and transgender women athletes, to undergo unnecessary medical procedures in order to participate in competitive sport (international sporting bodies);

(d) Reach consensus on policies concerning the protection of children participating in competitive sport, including in relation to children migrating to participate in high-level/professional sport (international sporting bodies);

(e) Review all policies and operations concerning major sporting events and professional sporting competitions for compliance with the Guiding Principles on Business and Human Rights, and put in place protective mechanisms for athletes, workers and citizenry (international/national sporting bodies; private actors).

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, prepared pursuant to Council resolution 26/7. The report is the first written by the Special Rapporteur since she took up her duties on 1 August 2015. In the report, she recalls the origins of the mandate and the international and regional legal framework that has been studied, assessed and developed in the work of her three predecessors. She notes that, despite a comprehensive international and regional legal framework which details the preconditions and prerequisites necessary in order to have an independent, competent and impartial judiciary and an independent and qualified legal profession, such independence and impartiality are still extremely vulnerable, are under attack or are merely non-existent, in many parts of the world.

Against this backdrop, the Special Rapporteur explains that it is time to revisit the well-established principles of judicial independence and impartiality, and the important body of work, including the recommendations, left by her predecessors, with a view to helping all stakeholders to take concrete measures to render the independence and impartiality of the justice system more effective. To that end, she proposes to begin working on a set of indicators of independence and impartiality which could be used by State institutions, judges, prosecutors, lawyers, civil society actors, donors and cooperation agencies, among others, to assess the independence and impartiality of specific justice systems, to identify needs for reform, and to allow targeted measures and actions to be taken to improve the administration of justice and the justice system in a more effective way.

The Special Rapporteur concludes by recalling the centrality of the independence of judges and lawyers to the promotion and protection of human rights and mentions specific issues that she hopes to continue monitoring or to study in more detail during her tenure.

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Report of the Special Rapporteur on the independence of judges and lawyers

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I. Introduction

1. The present report is the first report written by the Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, since she took up her duties on 1 August 2015. It is submitted in accordance with Human Rights Council resolution 26/7.

2. The Special Rapporteur takes the opportunity in her first report of stressing how much she has inherited from her predecessors, Gabriela Knaul, Leandro Despouy and Param Cumaraswamy, who gave visibility and recognition to the mandate while interpreting its scope and content. These former special rapporteurs clarified and consolidated the requirements necessary to achieve and maintain the independence and impartiality of the justice system, through both their thematic reports and their country visit reports. Taking their legacy into account is essential when looking into future ways to improve and strengthen the independence of the judiciary and the legal profession.

3. The Special Rapporteur notes that, despite a comprehensive international and regional legal framework which details the preconditions and prerequisites necessary to have an independent, competent and impartial judiciary and an independent and qualified legal profession, such independence and impartiality are still extremely vulnerable, are under attack or are merely non-existent, in many parts of the world. Against this background, she believes that it is time to revisit these well-established principles and the recommendations put forward by her predecessors, with a view to helping all stakeholders to take concrete measures to render the independence and impartiality of the justice system more effective. To that end, she proposes to begin working on a set of indicators of independence and impartiality which could be used by State institutions, judges, prosecutors, lawyers, civil society actors, donors and cooperation agencies, among others, to assess the independence and impartiality of specific justice systems, to identify needs for reform, and to allow targeted measures and actions to be taken to improve the administration of justice and the justice system in a more effective way.

4. The Special Rapporteur started to present her approach and ideas in her address to the Third Committee of the General Assembly in October 2015, when she presented the last thematic report prepared by her predecessor (A/70/263). In the present report, after reviewing the activities that she has carried out since taking up her duties (part II), she continues to explain her approach and the background against which she will be working (part III). She then provides preliminary information on the work that she proposes to carry out on indicators (part IV). She concludes by recalling the centrality of the independence of judges and lawyers to the promotion and protection of human rights and mentions some additional topics that she hopes to be in a position to study in more detail during her tenure (part V).

II. Activities since 1 August 2015

5. The activities carried out by the Special Rapporteur's predecessor between 1 March and 31 July 2015 are listed in her predecessor's last report to the General Assembly (A/70/263). From 1 August 2015 to 15 March 2016, the Special Rapporteur participated in the activities set out below.

A. Country visits

6. The Special Rapporteur carried out her first official country visit from 10 to 16 October 2015, to Guinea-Bissau, to examine and analyse the achievements and challenges

of Guinea-Bissau in ensuring the independence of judges, prosecutors and lawyers, as well as a fair and competent administration of justice (see A/HRC/32/34/Add.1). She thanks the authorities for their invitation and their engagement with her mandate and hopes that concrete measures will be taken to implement her recommendations. She also encourages the international donor community to take account of her report and to consider the recommendations contained therein when establishing their cooperation priorities and deciding on specific initiatives.

7. The Special Rapporteur would also like to thank the Government of Sri Lanka for inviting her, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, to conduct a joint visit to the country from 29 April to 7 May 2016. The final report of that visit will be presented to the Human Rights Council at its thirty-fifth session, in June 2017.

8. Since 1 August 2015, the Special Rapporteur has sent requests for official visits to the Governments of Ecuador and Lebanon, as well as reminders of pending requests for visits to the Governments of China, Egypt, the Islamic Republic of Iran and the Bolivarian Republic of Venezuela. She also sent a letter to Kenya, which had accepted a country visit request sent by her predecessor, confirming her interest in conducting a visit and proposing it take place during the second half of 2016. At the time of writing the present report, she had not received replies to these various requests.

9. Finally, the Special Rapporteur wishes to acknowledge the positive replies of the Governments of France, Germany, Greece, Iraq, Morocco, Nepal, Spain and the United States of America to the country visit requests sent by her predecessor. In this context, she wishes to thank the authorities of the countries concerned. She also informs the Human Rights Council that she will give consideration to the aforementioned replies in due course.

B. Communications and press releases

10. From 1 August 2015 to 29 February 2016, the Special Rapporteur sent a total of 55 communications, to 32 Member States from all regional groups and to one other entity, in the form of 46 urgent appeals (84 per cent of the communications) and 9 allegation letters (16 per cent of the communications). These communications, together with the responses from Governments, are included in the communications reports of special procedures (for those sent between 1 August and 30 November 2015, see A/HRC/31/79, and for those sent between 1 December 2015 and 29 February 2016, see A/HRC/32/53).

11. All 55 communications were sent jointly with other special procedure mandate holders. In the Special Rapporteur's opinion, this reflects the reality that situations in which the independence and impartiality of judges, lawyers and prosecutors, the proper functioning of the justice system and the right to due process of law and a fair trial are affected very often occur when other democratic institutions are at risk or when a variety of human rights are concurrently being violated, such as the right not to be subjected to arbitrary arrest or detention, the right not to be subjected to torture or ill-treatment, the right to freedom of opinion and expression, the right not to be subjected to discrimination, or the right to freedom of peaceful assembly and association.

12. A large majority of the communications addressed issues related to violations of guarantees of due process of law or of a fair trial, such as the lack of access or inadequate access to a lawyer, hearings held in closed session without justification, violations of the principle of equality of arms and the right to a defence, the trial of civilians before military courts, or the lack of impartiality of judges. In about a dozen of the communications, allegations relating to lack of due process or lack of a fair trial were raised in the context of cases where persons had been sentenced to, or were facing being sentenced to, the death

penalty. A dozen communications contained allegations of violations of the rights and independence of lawyers, which included killings, attacks, threats, intimidation, harassment and detention, as well as undue restrictions on their work. A few communications raised issues concerning undue pressures on prosecutors, and threats, attacks and intimidation directed against judges, as well as enforced disappearances and incommunicado detentions.

13. The Special Rapporteur wishes to underline that the above-mentioned communications exclusively reflect information that was transmitted to her and was subsequently acted upon. Complaints that contained insufficient information, that fell outside the scope of the mandate, or that the Special Rapporteur was not in a position to act upon owing to time, workload or other constraints, are not reflected in the numbers provided in the present report. Besides, problems regarding the independence and impartiality of the justice system are not limited to the States or entities to which communications were sent. Therefore, the fact that a particular State or entity may not have received a communication should not be interpreted as indicating that there are no challenges concerning the independence and impartiality of the judiciary and the administration of justice in that State or entity.

14. At the time of writing the present report, the overall reply rate for the communications sent by the Special Rapporteur was 42 per cent. The Special Rapporteur wishes to encourage States to reply promptly to all the communications that they receive and to address the specific violations and concerns identified therein in a meaningful way, in particular when the communications concern time-sensitive issues that may have irreversible consequences for people.

15. The Special Rapporteur used media releases to bring public attention to situations that she identified as particularly concerning. Excluding press releases and public statements related to her country visit, she issued a total of 10 media releases; 9 of those addressed specific country situations across regional groups and 1 focused on a particular theme related to the mandate. All 10 media releases were sent jointly with other special procedure mandate holders.

C. Other activities

16. Shortly after she took up her duties, from 14 to 18 September 2015, the Special Rapporteur was in Geneva for a series of meetings and consultations.

17. On 15 September 2015, she participated as a moderator in a side event of the Human Rights Council entitled "Judges, lawyers, prosecutors and human rights: 30 years of UN action". The event was convened by the International Bar Association's Human Rights Institute and the International Commission of Jurists. It was co-sponsored by the Permanent Missions of Australia, Botswana, Hungary, Ireland and Thailand, and the Council of Europe, as well as by the Association for the Prevention of Torture, Avocats sans frontières, the Colombian Commission of Jurists, the Commonwealth Lawyers Association, the Commonwealth Magistrates and Judges Association, the International Legal Assistance Consortium, Judges for Judges, and Lawyers for Lawyers.

18. The side event commemorated the thirtieth anniversary of the Basic Principles on the Independence of the Judiciary,[1] and the twenty-fifth anniversary of the Basic Principles

[1] Adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from 26 August to 6 September 1985, and endorsed in General Assembly resolutions 40/32 and 40/146.

on the Role of Lawyers and of the Guidelines on the Role of Prosecutors.[2] In this context, the Special Rapporteur emphasized that nowadays the independence of the judiciary is considered integral to the protection of human rights and to enforcement of the rule of law. She described these three sets of principles and guidelines as the most essential expression of the standards relating to judicial independence and impartiality and the independence of the legal profession.

19. On 16 September 2015, the Special Rapporteur held an open informal consultation with representatives of civil society, including associations of legal professionals.

20. On 17 September 2015, the Special Rapporteur participated as a panellist in a side event of the Human Rights Council that was entitled "Fair trials and judicial accountability in Maldives: ways forward" and was organized by Amnesty International. At this side event, she recalled the conclusions and recommendations of her predecessors who had conducted official visits to Maldives: Mr. Despouy in 2007 and Ms. Knaul in 2013. She also highlighted the concerns expressed by Ms. Knaul on the deterioration of the independence of the judiciary since 2013.

21. On 27 October 2015, the Special Rapporteur presented the last thematic report of her predecessor to the Third Committee of the General Assembly (A/70/263). In the first part of the report, Ms. Knaul recounted the numerous activities that she had carried out during her six years as Special Rapporteur, providing details and statistics on country visits, communications and media releases, among other things. In the second part of the report, she reviewed the issues and topics that she had addressed over the course of her mandate, categorizing them into seven thematic clusters: education, training and capacity-building of judges, lawyers and prosecutors; access to justice and legal aid; challenges to the independence and impartiality of judges; protecting the independence of lawyers; safeguarding the independence and impartiality of prosecutors and the autonomy of prosecution services; equality before the courts and fair trial guarantees; and impunity for human rights violations.

22. The Special Rapporteur also made use of her oral presentation to recall the main lines of her mandate, and to emphasize that ensuring the independence and integrity of the justice system requires continuous attention and monitoring in order to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes.

23. On 14 December 2015, the Special Rapporteur participated by means of videoconference in the sixth annual Geneva Forum of Judges and Lawyers, organized by the International Commission of Jurists, which focused on judicial accountability. During her keynote intervention, she stressed that independence and accountability were both indispensable to ensuring the suitability and integrity of members of the judiciary and respect for the rule of law. She recalled that judges and prosecutors must only be removed from office for proved incapacity, conviction for a crime, or conduct that renders them unfit to discharge their professional duties. She also cautioned against the very thin line that lies between accountability and undue pressure or interference.

24. On 14 and 15 January 2016, the Special Rapporteur participated — together with fellow special rapporteurs — as a panellist and expert in a seminar on human rights and election standards, organized in Atlanta, United States of America, by the Carter Center. The event, which was attended by former President Carter, was aimed at exploring ways to foster the work of the special procedures of the Human Rights Council in election

[2] Both adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990.

contexts and to improve cooperation between the special procedures and organizations working on election monitoring. In this context, the Special Rapporteur presented her views about the requirements of independence and impartiality of the members of election complaint adjudicatory bodies.

25. On 8 March 2016, the Special Rapporteur delivered a statement at a training event on the universal human rights system, organized by the OHCHR Regional Office for South America, the Office of the United Nations High Commissioner for Refugees and the Secretary of Human Rights of the Government of Argentina, and held in Buenos Aires. In her lecture, she described the work of the special procedures and explained their working methods to a group of State officials.

26. Finally, on 10 March 2016, the Special Rapporteur delivered the inaugural address at the permanent training course for magistrates and judicial personnel in San Miguel de Tucumán, Argentina, at the invitation of the Office of Human Rights and Justice of the Supreme Court of the Province of Tucumán. She focused on the main features of justice in the twenty-first century. She talked about human rights and the right to justice, and in particular about access to justice, the requirements of independence and impartiality, and the need for continuing legal training, including training on international human rights law and gender issues. She also stressed that social perceptions were important: justice should not be distant from people or expensive for them, or take too long to be done.

III. The independence of the justice system revisited

A. Origins of the mandate

27. The mandate of the Special Rapporteur on the independence of judges and lawyers was established by the Commission on Human Rights, in its resolution 1994/41, to inquire into allegations of interference and attacks on the independence of the judiciary, lawyers and court officials; to identify and record those attacks, but also the progress achieved in this area; and to study important and topical questions of principle with a view to protecting and enhancing the independence of judges, lawyers, prosecutors and court officials.

28. Yet, the United Nations had showed concern about the independence of judges, prosecutors and lawyers well before the creation of the mandate. Early in 1980, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (later known as the Subcommission on the Promotion and Protection of Human Rights) appointed L.M. Singhvi as Rapporteur to work on this issue. He submitted several successive reports,[3] and a final one that included the Draft Universal Declaration on the Independence of Justice containing a body of important principles relating to the independence of judges and lawyers.[4] The Sub-Commission decided to refer the theme to the Commission on Human Rights, which recommended that the principles contained in Mr. Singhvi's draft declaration be taken into consideration when enforcing the Basic Principles on the Independence of the Judiciary, which had been adopted in 1985.[5]

29. In 1989, Louis Joinet, expert member of the Sub-Commission, was appointed to prepare a working paper on the means of monitoring the Basic Principles on the

[3] A preliminary report in 1980 (E/CN.4/Sub.2/L.731) and progress reports in 1981 (E/CN.4/Sub.2/481 and Add.1), 1982 (E/CN.4/Sub.2/1982/23) and 1983 (E/CN.4/Sub.2/1983/16).
[4] See E/CN.4/Sub.2/1985/18 and Add.1-6.
[5] See E/CN.4/RES/1989/32.

Independence of the Judiciary.[6] The work of both Mr. Singhvi and Mr. Joinet led to the creation in 1994 of the mandate of the Special Rapporteur on the independence of judges and lawyers.

B. International legal framework

30. The international legal framework supporting the mandate's goals is well established and universal. It includes treaty law, such as article 14 of the International Covenant on Civil and Political Rights, adopted by the General Assembly in December 1966 and in force for 168 States, and its regional counterparts, such as article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950, which is in force for the 47 European States members of the Council of Europe, article 8 of the American Convention on Human Rights, of 1969, which is in force for 23 States members of the Organization of American States, article 7 of the African Charter on Human and Peoples' Rights, of 1981, which is in force for 53 States members of the African Union, or articles 12, 13 and 16 of the Arab Charter on Human Rights, of 2004, which is in force for 13 States members of the League of Arab States.

31. Article 14 of the International Covenant on Civil and Political Rights, the most universal of these treaty provisions, has been the object of interpretation by the Human Rights Committee through its general comments,[7] as well as in its jurisprudence and concluding observations on the periodic reports of States parties to the Covenant. Such interpretation is extremely valuable in order to assess the scope of the independence of the justice system and its main features.

32. The independence of justice is also protected under article 10 of the Universal Declaration of Human Rights, of 1948, and under articles xviii and xxvi of the American Declaration of the Rights and Duties of Man, also of 1948. Later, in 1985, the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, which would be endorsed shortly afterwards by the General Assembly. Moreover, as noted by Mr. Cumaraswamy in the first report he submitted to the then Commission on Human Rights, "the general practice of providing independent and impartial justice is accepted by States as a matter of law and constitutes, therefore, an international custom in the sense of Article 38 (1) (b) of the Statute of the International Court of Justice."[8]

33. This rather comprehensive set of international and regional rules and standards was complemented, five years later, with the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, adopted in 1990 by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Special Rapporteur notes that, while these principles were first conceived and viewed as additional essential guarantees to ensure fair and impartial justice for all those prosecuted under criminal charges, nowadays the independence of the judiciary is no longer strictly associated with criminal justice matters. Rather, an independent and impartial justice system is considered integral and inherent to the protection and promotion of human rights and the rule of law. The independence of the judiciary and the legal profession is also central to the right to an adequate and effective remedy for human rights violations.

[6] See E/CN.4/RES/1989/22.

[7] See, in particular, general comment No. 32 on the right to equality before courts and tribunals and to a fair trial.

[8] See E/CN.4/1995/39, para. 35.

34. The scope and requirements of an independent and impartial justice system have also been addressed in quite some detail and in a variety of situations in the jurisprudence of regional human rights courts. For example, the Inter-American Court of Human Rights has stressed the applicability of article 8 of the American Convention on Human Rights — the provision on the right to a fair trial — to the decisions taken by any public authority that exercises jurisdictional functions.[9] In another case, the Court ruled that requirements of independence and impartiality must also be enforced in cases relating to decisions taken by adjudicatory bodies in the context of electoral matters.[10] For its part, the European Court of Human Rights has determined that it is particularly important for the institution in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation.[11] In turn, the Committee of Ministers of the Council of Europe has recommended that if disciplinary measures need to be taken relating to judges, the law should provide for appropriate procedures to ensure that they are given at least all the due process requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), particularly that the case should be heard within a reasonable time frame and that they should have a right to answer any charges.[12] Many more decisions of the regional courts clarify the scope of application of the principles of judicial independence and impartiality.

35. Despite such a comprehensive legal framework and body of jurisprudence and interpretation, the independence of judges, lawyers and prosecutors is still extremely vulnerable, is under attack or is merely non-existent, in many parts of the world. That is why revisiting the principles of an independent and impartial justice system with a view to recommending concrete ways to render such independence more effective seems timely to the Special Rapporteur. In order to do so, the Special Rapporteur will not only need to take existing international norms and standards into account, but also pay attention to the context in which independence has to be assured and preserved and address the commitments, or lack thereof, of all stakeholders, in particular States.

C. Need for a democratic context

36. In light of this legal framework, it is evident that the natural context for the realization of the independence of judges, lawyers and prosecutors is that of a democracy. All human rights treaties refer to a democratic society as the natural environment for the protection and promotion of human rights. What is necessary in a democratic society is also the measure against which restrictions to human rights and fundamental freedoms will be assessed to determine if they are acceptable or not. A functioning democracy ensures the separation of powers and, as noted by the first Special Rapporteur, "the principle of the separation of powers... is the bedrock upon which the requirements of judicial independence and impartiality are founded".[13]

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[9] Inter-American Court of Human Rights, *Constitutional Court v. Peru*, Judgment of 31 January 2001, Series C No. 55.

[10] Inter-American Court of Human Rights, *Yatama v. Nicaragua*, Judgment of 23 June 2005, Series C No. 127.

[11] European Court of Human Rights, *Georgian Labour Party v. Georgia*, Judgment of 8 October 2008; and European Court of Human Rights, *Namat Aliyev v. Azerbaijan*, Judgment of 8 July 2010

[12] Recommendation No. R (94) 12 of the Committee of Ministers to member States on the independence, efficiency and role of judges.

[13] See E/CN.4/1995/39, para. 55.

37. However, democracy is not static; it is evolving with societies and presents different characteristics. Yet, none of these characteristics must impair the core principles of the independence and impartiality of the justice system.

38. A strong and independent legal profession is also needed to ensure access to justice and the right to equality before the courts and a fair trial, including specific due process of law guarantees in criminal proceedings. For this reason, lawyers must be free to consult and assist their clients, provide legal advice and exercise their profession in a free and secure environment.

D. Committing to the independence of judges and lawyers

39. Clear commitments from governments and other political and economic actors, but also from judges, prosecutors and lawyers themselves, to respecting, protecting and strengthening the independence and impartiality of the justice system are also necessary. Any legal provision protecting the independence of judges, lawyers or prosecutors becomes useless if there is no commitment to respect and enforce it. Moreover, whenever one of these groups "forgets" the specific roles they have to play in a democratic society — roles which come with both rights and duties — the prerequisites of independence become difficult to fulfil.

40. States must respect and protect the independence of judges, prosecutors and lawyers at different levels and in different ways. States have to observe appropriate mechanisms for the selection, appointment, promotion, transfer and discipline of judges and prosecutors, in line with the respective international norms and standards. They also have to put in place mechanisms to protect judges, prosecutors and lawyers against pressure, interference, intimidation and attacks and to ensure their security.

41. States should also promptly and diligently abide by or enforce judicial decisions and judgments. Furthermore, States should show their commitment to an independent, impartial and competent justice system by providing adequate infrastructures, facilities and material resources for the judiciary to perform its duties, allocating a reasonable part of the national budget to the justice sector. States should also commit to enacting legislation necessary to ensure the protection of the independence and impartiality of the justice system.

42. States should respect the independence of lawyers too and recognize the important role they play, including by providing for their security and allowing them to associate freely. It is not possible or reasonable to imagine that justice can be done without independent and competent lawyers. States must therefore ensure that lawyers are in a position to practise their profession without obstacles.

43. States should strive to ensure access to justice for all, including by setting up institutionalized legal aid schemes free of charge for those lacking resources. In this context, the Special Rapporteur notes that, on 25 September 2015, the 193 Member States of the United Nations committed themselves to providing access to justice for all, in adopting the 2030 Agenda for Sustainable Development (see Sustainable Development Goal 16).

44. States should also ensure that anyone can enter the legal profession, the prosecution services and the judiciary without discrimination of any sort, in particular on the grounds of gender; States should promote greater representation of women and minorities.

45. Independence is not a prerogative of judges, it is their duty. Judges should be fully aware of the distinct function that they have in society and of how they are perceived by people. Judges are expected to keep social peace through adjudication of claims and settlement of disputes, applying the law. They have an obligation to deliver justice

impartially and on an equal footing to all. In doing so, they should ensure that they are independent, from a personal, a political but also an intellectual point of view. They should be completely detached from the parties in the litigation. They should also be individually autonomous and enjoy what Owen Fiss called political insularity, that is, independence from political institutions and the public in general.[14]

46. Lawyers, too, have to commit to the independence of their profession and recognize the central role they play in the justice chain. Practising law is not a business but a profession which comes with specific rights but also essential duties and a code of deontology to respect. Lawyers put their knowledge at the service of representation and defence of their clients.

E. Building a domestic culture of judicial independence

47. Domestic rules and standards are important for many reasons. They have both a symbolic and a legal value and they inform the public on the behaviours that are acceptable and those that are prohibited. A review of domestic legal provisions in order to enshrine the requirements for the independence of judges, lawyers and prosecutors is imperative for more than one State.

48. However, norms alone are not sufficient. They require a legal culture, that of the rule of law, in which respect for the independence of judges and lawyers plays a crucial role. Such a legal culture is built through both formal education, delivered in law schools and schools for the judiciary, and informal education, which requires political acts and signals, including at the highest level of government, to send adequate messages highlighting the importance of respecting and enforcing these rules. In this case, government officials, political and social leaders, and academics have an important role to play. An official discourse hostile to the independence of judges, lawyers and/or prosecutors, even if not followed by concrete action, contributes to delegitimizing the judiciary and to undermining the main mechanism at the disposal of democratic societies for the peaceful settlement of disputes and for providing an effective remedy to victims of human rights violations.

49. As seen above, a solid set of international legal rules, standards and principles aimed at ensuring and reinforcing the independence and integrity of the justice system exists today. In many countries, a comprehensive set of domestic rules and principles is in place too. Yet, independence should not be taken for granted. Indeed, ensuring independence requires continuous attention and monitoring to identify and tackle new or re-emerging problems and challenges triggered by societal, political and economic changes. These challenges require proper action by States but also adequate monitoring by civil society and other stakeholders.

IV. Indicators

50. The Special Rapporteur considers that it is a priority that judges, prosecutors, lawyers, State institutions, and other stakeholders, including the international community, be able to gather information on the independence, impartiality and effective functioning of specific justice systems in a more systematic and consistent way in order to assess them against international standards on the matter.

[14] Owen Fiss, "The limits of judicial independence", *University of Miami Inter-American Law Review*, vol. 25, No. 1, p. 57.

51. Currently, there is no universal system that provides detailed and specific information on the actual situation of national justice systems. Yet, such information is crucial to be able to assess their level of independence and to design measures to improve and strengthen them that will be both appropriate and effective. Some categories of information can assist in understanding the context in which a justice system works, other categories provide indications on procedures and requirements in place for the exercise of the jurisdictional function, and others allow the dysfunctionalities of the system to be inferred. The Special Rapporteur believes that such information would be useful to build a frame of reference for States, international organizations and civil society to be able to study how justice systems work, assess their independence and impartiality, and identify deficits and challenges. Having precise information should allow for better and more effective decisions and measures.

52. The Special Rapporteur is aware of the growing demand for both qualitative and quantitative indicators to help in promoting and monitoring the implementation of human rights. Indicators are useful tools to articulate and advance claims on the duty-bearers, and to formulate public policies and programmes that facilitate the realization of human rights. In 2012, the Office of the United Nations High Commissioner for Human Rights published a guide aimed at translating the narrative of human rights into contextually relevant indicators and benchmarks for the implementation and measurement of human rights at the country level.[15] When it comes to the independence of judges and lawyers, the use of appropriate indicators could provide precise and relevant information on a given justice system which would help the State and other stakeholders, including the Special Rapporteur, in assessing progress in the implementation of international human rights obligations relating to independence and impartiality.

53. The Special Rapporteur is convinced of the timeliness of developing a set of indicators that would provide information on national justice systems, including on the way they are structured and how they comply with international standards and norms on independence and impartiality. Indicators provide factual information and data that can be essential in order to understand specific situations and assess the implementation progress of human rights obligations.

54. The use of indicators has led to the development of mapping exercises, especially at the regional level, such as those carried out by the European Union[16] or the Justice Studies Centre for the Americas,[17] as well private initiatives focusing on a set of indicators relating to the structure of the justice system, how it works, and the quality of the services it delivers.[18] These initiatives may have different purposes, but they all provide extremely useful information related to the independence and impartiality of justice systems.

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[15] *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, New York and Geneva, 2012.

[16] European Commission, Directorate-General for Justice, *The 2015 EU Justice Scoreboard*, COM (2015) 116 final. The foreword to this document indicates that "the EU Justice Scoreboard provides an overview of the quality, independence and efficiency of EU member States' justice systems. Together with individual country assessments, the EU Justice Scoreboard helps to identify possible shortcomings or improvements and to regularly reflect on progress."

[17] Centro de Estudios de Justicia de las Américas, *Cifrar y Descifrar: Manual para generar, recopilar, difundir y homologar estadísticas e indicadores judiciales*, vol. 2 (2005).

[18] See, for instance, Germán Garavano and others, "Indicadores de desempeño judicial", Foro de Estudios sobre la Administración de Justicia, in *La Ley Actualidad*, Buenos Aires, 18 July 2000; and Todd Foglesong and others, "Measuring progress towards safety and justice: a global guide to the design of performance indicators across the justice sector", Vera Institute for Justice, New York, 2003.

55. Specific indicators can measure different dimensions of justice systems. By way of illustration, indicators can shed light on the composition of personnel of the justice sector, their training, the budgetary resources allocated to them, their salaries, or even the level of judicial independence.

56. There are many reasons to justify the need for indicators focused on the justice system. First, such indicators are a useful tool for drawing a more accurate map of the situation in each country. On the basis of information obtained through these indicators, States can diagnose problems more precisely and develop more effective solutions to improve the issues and dysfunctions identified. These specific indicators will therefore constitute an instrument for States to better manage their respective judicial systems.

57. Second, judicial indicators can enable dialogue, on both the needs and the progress achieved by justice systems, between the different groups involved — those that have a role to play in the system and those that benefit from it, including judges, lawyers, prosecutors, government officials, members of civil society, or the international donor community.

58. The Special Rapporteur believes that judicial indicators could serve as a framework for assessing the status of the various institutions of justice in a given State and as a compass for countries wishing to progress and to achieve better performance of their justice sector.

59. The Special Rapporteur notes that indicators will not involve, initially, an evaluation system on the quality of each judicial system. They should consist of a set of benchmarks allowing study of the status of essential judicial structures.

60. For these reasons, the Special Rapporteur hopes to develop, during the course of her mandate, a proposition for judicial indicators to increase awareness of the role of justice in every country. To do so, she will develop an initial project that will be presented to the Human Rights Council and other stakeholders in due course, in which she wishes to incorporate the different perspectives described in the present report in order to propose a menu of indicators with a degree of acceptance by the international community.

V. Conclusions and considerations

61. The present report expresses the preliminary views of the Special Rapporteur on her mandate and the particular project that she hopes to carry out. Essentially, she has noticed that there is, today, a fairly complete set of principles and prerequisites regarding the independence of judges, prosecutors and lawyers, which have been recognized in a significant number of international and regional instruments, some of which are binding on States, and have been developed through the jurisprudence of regional courts, treaty bodies, and other interpretative documents, including the thematic and mission reports of former mandate holders.

62. Forty years after the entry into force of the International Covenant on Civil and Political Rights, thirty years after the adoption of the Basic Principles on the Independence of the Judiciary, and twenty-five years after the adoption of the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, the time has come for the independence of judges, prosecutors and lawyers to be revisited.

63. In the present context, renewed commitments to the principles of an independent and impartial justice system are necessary in order to make them a reality. All stakeholders, including political authorities, and members of the judiciary, the legal profession and the prosecution services, but also civil society representatives, should be aware of the role of independent judges, prosecutors and lawyers in a

democratic society and should contribute to respecting and protecting this independence.

64. The Special Rapporteur considers it is a priority that the actors in the justice system, other stakeholders and the international community be informed of the status and progress of a particular judicial sector, through a system of indicators that make relevant information accessible. Currently, the international community lacks such a universal system that is able to provide consistent and comprehensive information on the actual situation of national judicial systems.

65. The Special Rapporteur believes that it is necessary but also timely to develop a set of indicators that will provide precise and relevant information on national judicial institutions and the way they comply with international standards of judicial independence. Judicial indicators have the potential to shed light on different dimensions of a justice system.

66. Finally, the Special Rapporteur will strive to reinforce understanding of the universality and centrality of her mandate as regards the protection and promotion of human rights. In doing so, she will continue to look into issues already addressed by her predecessors, such as access to justice, Sustainable Development Goal 16, the independence and situation of prosecutors, integrity and accountability of the judiciary, and the situation of lawyers and particularly the obstacles to the independent exercise of their profession and grave violations committed against them, as well as the role that should be played by bar associations to protect lawyers' independence and strengthen the rule of law, the trial of civilians before military and special courts, and impunity for human rights violations, among others that warrant the attention of the mandate as well as of the Human Rights Council.

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Report of the Special Rapporteur on the independence of judges and lawyers

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers, on her mission to Guinea-Bissau from 10 to 16 October 2015. In almost every meeting she held, the justice system was described as sad and terrible. In this report, she describes her findings, which are daunting. Yet, she concludes that Guinea-Bissau can count on a generation of qualified professionals who are willing and able to work hard to improve the justice system if given the opportunity to do so.

The Special Rapporteur makes a series of recommendations, which, given the current economic and development situation of the country, can be implemented only with the close and continued technical and financial support of international donors and the United Nations.

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Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Guinea-Bissau*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, visited Guinea-Bissau from 10 to 16 October 2015, at the invitation of the State's authorities, to examine and analyse the achievements and challenges of the country in ensuring the independence of judges, prosecutors and lawyers and a fair and competent administration of justice.

2. In Bissau, the Special Rapporteur held meetings with the President of the Republic; the Prime Minister; the Minister of Justice; the President and judges of the Supreme Court of Justice; the Attorney General; the President, judges and prosecutors of the Superior Military Tribunal; the director of the National Judicial Training Centre; members of the National Popular Assembly; and the chief of the judicial police. She also held meetings with members of the Guinea-Bissau bar association; lawyers; members of associations of prosecutors and jurists; the dean and professors of the faculty of law in Bissau; non-governmental organizations; the Special Representative of the Secretary-General for Guinea-Bissau and representatives of the United Nations and its agencies; and other stakeholders. The Special Rapporteur also travelled to Bafatá, where she met with the Governor, judges and prosecutors from the regional tribunal, the director of the Centre for Access to Justice of Bafatá, human rights defenders and traditional leaders.

3. The Special Rapporteur wishes to reiterate her gratitude to the authorities of Guinea-Bissau for their invitation and engagement with her mandate. She also warmly thanks the human rights section of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) for its dedicated support in organizing the visit, and all those who dedicated their time to sharing their expertise and opinions with her.

II. Historical and political context

4. Guinea-Bissau is a former Portuguese colony with a registered population of 1.7 million. The country is divided into nine administrative regions: Bissau Autonomous Sector, Biombo, Cacheu, Oio, Bafatá, Gabú, Quínara and Tombali on the mainland, and Bolama-Bijagós, an archipelago of 88 islands, 20 of which are inhabited.

5. The struggle for self-determination and decolonization was led by the African Party for the Independence of Guinea and Cape Verde (PAIGC). Guinea-Bissau declared its independence on 24 September 1973. A revolutionary council governed the country until 1984. The first step towards the transition to a multiparty parliamentary system was taken on 5 May 1991 with the abolition of article 4 of the Constitution that stated PAIGC was the only political party in the country. PAIGC has nevertheless dominated the political scene and ruled the country since then. Political instability has become the main feature of Guinea-Bissau, with recurrent military and political coups d'état, political assassinations and persecutions, and a year-long civil war between 1998 and 1999. No president has served a full five-year term and no Government has completed its four-year mandate. Moreover, a substantial part of the economic and social infrastructure was left in ruins.[1]

6. The most recent coup d'état took place on 12 April 2012. Constitutional order was restored when general and presidential elections were held on 13 April 2014; a presidential run-off took place on 18 May 2014. The Parliament was inaugurated on 17 June 2014, with

[1] Guinea-Bissau is ranked at the 178th position on the human development index and State institutions are almost absent from the majority of the country's territory.

the President, José Mário Vaz, assuming office on 23 June 2014, and the Prime Minister, Domingos Simões Pereira, sworn in on 4 July 2014. However, tensions between the President and the Prime Minister culminated in the dismissal, by the President, of the entire Government on 13 August 2015, with immediate effect. On 20 August, the President issued a decree appointing Baciro Dja as the new Prime Minister. The dismissal of the Prime Minister and the appointment of a new one were contested by PAIGC, which possesses an absolute majority in the National Assembly.

7. The presidential decree appointing Mr. Dja was challenged before the Supreme Court of Justice. In a move deemed unprecedented by many of the interlocutors of the Special Rapporteur, the Supreme Court declared the decree unconstitutional on 9 September 2015, thus ruling that the political party that had won the elections had the right to choose the Prime Minister and that the President could not veto that decision. The President abided by the decision. An agreement was reached and Carlos Correia was sworn in as Prime Minister on 17 September 2015.

8. When the Special Rapporteur arrived in the country, no Government had yet been appointed. Amid tensions between the President and the new Prime Minister, a new Government was announced on 13 October, just in time for the Special Rapporteur to meet with the Minister of Justice.

III. Justice system

A. Constitutional provisions

9. The current Constitution of Guinea-Bissau was adopted on 16 May 1984 and amended five times between 1991 and 1996. It recognizes the principle of separation of powers in article 59, paragraph 2.

10. The judicial authority is regulated by chapter VII of Title III, entitled "Judicial power". The independence of the tribunals is protected in article 120, paragraph 4, and the independence of judges in article 123, paragraph 2. The Supreme Court of Justice is established as the apex tribunal in the country; its judges are appointed by the Superior Council of the Judiciary and sworn in by the President (art. 120, paras. 1 and 2). Special tribunals are explicitly prohibited, with the exception of military tribunals and administrative, tax and audit tribunals (art. 121, paras. 1 and 2). The Constitution also allows for the creation of tribunals to settle "social disputes", whether civil or criminal (art. 122).

11. The Constitution establishes the Superior Council of the Judiciary as the body in charge of the management of the career of judges, including appointment, placement, transfer, promotion, disciplinary action and dismissal (arts. 120, para. 5, and 123, para. 4). Article 125 of the Constitution also defines the role of the Public Ministry as the body in charge of representing public and social interests and exercising criminal action, and sets its hierarchical structure under the direction of the Attorney General, who is appointed and dismissed by the President (arts. 68 (p) and 125, para. 3).

12. Finally, the Constitution guarantees a selected set of fundamental rights under Title I, on fundamental principles, and Title II, on fundamental rights, freedoms, guarantees and duties. This set includes the rights to equality before the law and to seek redress before the tribunals, as well as due process and fair trial guarantees. Article 29 also explicitly stipulates that fundamental rights enshrined in the Constitution do not exclude any other rights included in either national or international law and must be interpreted in accordance with the Universal Declaration of Human Rights.

B. Legal framework

13. Guinea-Bissau is governed by a mixed legal system of civil law, which incorporated Portuguese law at independence and was influenced by early French civil code and customary law. Some of the most important pieces of legislation of significance to the mandate of the Special Rapporteur are listed in the present section.

14. Along with the relevant constitutional provisions, the courts and the judiciary are regulated by Organic Law No. 3/2002 on tribunals, as revised by Law No. 6/2011; Law No. 7/2010 on the regulation of the Organic Law on tribunals; Decree-Law No. 6/93, setting out the Organic Law on sector tribunals and the statute of judge-presidents of sector tribunals; and Decree-Law No. 7/92 on the Court of Accounts. The statute and career of judges, as well as the organization and functioning of the Superior Council of the Judiciary, are set out in Law No. 9/95 on the Statute of Judicial Magistrates. Military tribunals are governed by Law No. 2/78 on military justice and the Code of Military Justice.

15. Public prosecution is regulated by Organic Law No. 7/95 on the Public Ministry and Law No. 8/2011 on the organization of criminal investigation; the statute and career of prosecutors and the organization and functioning of a Superior Council of Magistrates of the Public Ministry are set out in the Statute of Magistrates of the Public Ministry (Law No. 8/95).

16. The independent exercise of the profession of lawyer is protected under article 72 of the Organic Law on tribunals; the rights and duties of lawyers are further clarified in the Statutes of the bar association of Guinea-Bissau of 1991. The legal framework is further completed by the Criminal Code, the Civil Code, the Criminal Procedure Code and the Civil Procedure Code.

17. At the international level, Guinea-Bissau is party to most international human rights treaties, including the International Covenant on Civil and Political Rights, but not to the Rome Statute of the International Criminal Court. At the regional level, Guinea-Bissau has ratified the African Charter on Human and Peoples' Rights, but not the Protocol on the Establishment of an African Court on Human and Peoples' Rights. Guinea-Bissau is also subject to the authority of the Court of Justice of the Economic Community of West African States (ECOWAS), which has jurisdiction, among others, to determine cases of violation of human rights that occur in any member State.

C. Court structure

18. The court structure in Guinea-Bissau is essentially set out in the organic laws on tribunals and on sector tribunals. It is organized around regions and sectors, which correspond to the political-administrative division of the country. The Special Rapporteur notes with great concern that many tribunals envisioned in the legislation have not been set up or are not operational owing to the lack of adequate infrastructure and financial and other resources. As a result, there are regions in the country where there is simply no tribunal that people can resort to.

Supreme Court of Justice

19. The Supreme Court of Justice is established in the Constitution and is regulated by the Organic Law on tribunals. It is the highest appeal tribunal in the country, but also has the final authority on the interpretation of the Constitution and the constitutionality of laws. It functions under the direction of a president, who is elected by his or her peers for a mandate of four years, renewable once. At the time of the visit, it was composed of nine judges. The Court consists of the plenary and three chambers for civil, criminal, and social

and administrative matters. Each chamber is also headed by a president, who is the most senior judge.

20. Supreme Court judges are appointed by the Superior Council of the Judiciary after a publicly advertised competitive selection process and sworn in by the President of the Republic. Their irremovability until reaching retirement age is recognized in the law and they are not liable for their judgments and decisions. The Superior Council of the Judiciary is the only body competent to bring disciplinary actions against judges and dismiss them.

Court of Appeal

21. The Organic Law on tribunals establishes tribunals of second instance referred to as circuit tribunals and defines their functioning and competence. Circuit tribunal judges are appointed by the Superior Council of the Judiciary after a publicly advertised competitive selection process and their irremovability until reaching retirement age is recognized in the law. The Council is the organ competent to bring disciplinary actions against them and dismiss them.

22. According to the information available to the Special Rapporteur, only one such tribunal currently exists in the country, the Court of Appeal of Bissau, the jurisdiction of which extends to the whole territory of the State, not only the circuit of Bissau.

Regional tribunals

23. Regional tribunals are set out in the Organic Law on tribunals as first instance tribunals. They can be composed of one judge or three judges. Regional tribunals can be tribunals of general jurisdiction or specialized tribunals. Their respective competence is set out in the law. Judges are appointed by the Superior Council of the Judiciary on the basis of the results obtained during an initial training period.

24. At the time of writing, regional tribunals of general jurisdiction were operating in only five of the country's nine regions: Bissau; Bafatá; Gabú; Oio; and Quínara, which re-opened in March 2014 after three years of inactivity. As a result, the jurisdiction of the regional tribunal of Oio extends over the region of Cacheu, that of the tribunal of Quínara over the regions of Tombali and Bolama-Bijagós, and that of the tribunal of Bissau over the region of Biombo.

25. The Organic Law on tribunals also provides for the following first instance tribunals with specialized jurisdiction: civil tribunals; criminal tribunals; family and juvenile tribunals; labour tribunals; administrative tribunals; commercial tribunals; and maritime tribunals. According to the information provided to the Special Rapporteur, no such specialized tribunal has been set up to date. The organic law further establishes a tribunal for the execution of sentences, the organization and functioning of which are set out in Law No. 7/2011.

Sector tribunals

26. At the beginning of the 1990s, in an effort to facilitate people's access to formal justice, the Government decided to create sector tribunals. The competence and functioning of these tribunals is regulated by Decree-Law No. 6/93. As stipulated explicitly in the decree-law, sector tribunals seek to administer justice in a simplified manner and on the basis of broad popular participation. They have limited jurisdiction over both civil and criminal matters.

27. Sector tribunals each consist of a judge-president and two advisors. The judge-president must be older than 25 years of age and preferably a law graduate; he or she is selected through a competition and appointed by the judge of the regional tribunal whose

territorial jurisdiction covers the location of the sector tribunal concerned. Advisors are citizens of more than 30 years of age who must have been residing for at least three years in the territory under the jurisdiction of the sector tribunal concerned. They are summoned for every hearing.

28. According to the information provided to the Special Rapporteur, only 22 sector tribunals of 47 are currently operational. There are no functioning sector tribunals in the regions of Quínara and Bolama-Bijagós.

Specialized tribunals

29. Military tribunals are enshrined in the Constitution, which gives them jurisdiction over crimes that are "essentially military" (art. 121, para. 2 (a)). The organization and functioning of military tribunals are regulated by the law on military justice and the Code of Military Justice of 1924, inherited from the former colonizer. There are two levels of military tribunals: the Superior Military Tribunal, composed of five judges nominated by the State Council, and regional military tribunals, composed of five judges nominated by the executive branch. At the time of writing, the only functioning military regional tribunal was located in Bissau.

30. The Court of Accounts was established by Decree-Law No. 7/92 as an independent organ for the oversight of the legality of public expenditure. The powers of that court and the statute of its judges are defined in the decree-law. The court is composed of four judge-counsellors, a number that is deemed insufficient to respond to all the demands and applications.

IV. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

A. Legislative challenges

31. It is the Special Rapporteur's belief that the major issues faced by Guinea-Bissau in the area of justice are not normative; rather, they lie in the deficient or even absent implementation of existing domestic and international provisions. For instance, the laws on domestic violence or female genital mutilation, which were adopted in an effort to incorporate international human rights obligations into the domestic legal apparatus, have to date not been enforced appropriately.

32. This does not mean that constitutional and legislative revisions are not timely and necessary, especially considering that some laws were adopted before independence. Moreover, laws such as the Labour Code of 1961, the Civil Code of 1966 or the Code of Military Justice of 1924 have to be reviewed not only because the political situation of the country has changed, but also because in 50 years societies have gone through major developments that require the law's attention.

33. With many legislative gaps and provisions that are too vague and/or contradictory, it is very difficult for judges to fairly apply and interpret the law. It is also essential to bear in mind that in most instances legal rules have to be respected and applied by citizens and various State agents who are not law graduates. In addition, the Special Rapporteur notes with great concern that laws are written and published exclusively in Portuguese, a language that is spoken and used by only slightly more than 10 per cent of the population. Also, it is difficult to have access to copies of laws, most of which are not available in electronic format and on a public platform. In addition, the illiteracy rate is high. Many

people are therefore de facto excluded from knowing their rights and what behaviours are prohibited.

34. The Special Rapporteur believes that a careful analysis of a large number of constitutional provisions in the light of the State's international human rights obligations is indeed necessary. Such constitutional revision was already recommended by the Heads of State and Government of ECOWAS at the end of its Extraordinary Summit held in Dakar in September 2015. A parliamentary commission for constitutional revision has already been set up, but the scope of its mandate remains unclear.

B. Independence and impartiality of the judiciary

35. The Constitution of Guinea-Bissau provides that tribunals are sovereign organs with competence to administer justice on behalf of the people (art. 119), and protects the independence of the tribunals and of judges (arts. 120, para. 4 and 123, para. 2, respectively). According to the Organic Law on tribunals, such independence includes full autonomy regarding administrative, financial and disciplinary matters. The Superior Council of the Judiciary is in charge of the administration of judges' careers, including appointments, transfers and promotions, and disciplinary action.

36. The composition of the Superior Council is problematic, however, as out of a total of 15 members, only 5 are judges. The other members consist of three persons designated by the President, six persons designated by the National Assembly and one court official elected by his or her peers. As it stands, the Superior Council is vulnerable to political manipulation and interference, thereby jeopardizing the independence of judges. Such a body should preferably be composed of a majority of judges, and political representation should not be allowed.

37. The constitutional and statutory guarantees of independence have not prevented judges from suffering external and undue interference, pressure, intimidation and threats, in particular from members of the executive branch, the armed forces or other high-ranking State officials, often linked to organized crime. Yet, despite the fact that physical security is an essential condition for judges to carry out their duties independently and impartially, there is no institutionalized protection mechanism. The Special Rapporteur is also concerned that judicial decisions, such as summonses or sentences, are not always complied with or enforced by the relevant authorities.

38. Beyond independence, judges are required to be impartial and appear impartial to a reasonable observer. In this context, the Special Rapporteur is concerned about reported conflicts of interest involving judges, in particular conflicts related to judges' personal relationships with plaintiffs or defendants. As noted in the Bangalore Principles of Judicial Conduct, judges should avoid situations that might reasonably give rise to suspicion or appearance of favouritism or partiality.

39. It is important to bear in mind that the requirements of independence and impartiality are not aimed at benefiting the judges themselves, but rather the court users, as part of their inalienable right to a fair trial. Therefore, ensuring the integrity and accountability of judges through fair and impartial disciplinary procedures is an essential aspect of protecting the independence and impartiality of the justice system. In this context, it is problematic that, while the Statute of Judicial Magistrates includes some provisions on the duties, incompatibilities, rights and privileges of judges, there is no code of conduct providing detailed guidance to the judiciary.

40. The Special Rapporteur is also concerned that judges' accountability is not enforced adequately. As a result, some judges stay in their position despite inappropriate behaviour.

The reported lack of inspection of the work of judges also contributes to allowing poor or even prohibited behaviour to continue.

41. While relatively well protected in the laws, the independence of the judiciary does not seem to be effective in practice, at least not in some of the circumstances described in the present report.

C. Financial and material resources

42. The financial and material deficits of the judicial branch are many and prevent a prompt and adequate delivery of justice. Most tribunals do not have acceptable premises. Some tribunals are not functioning because they simply do not have offices, while others are housed in buildings rented from private owners. When the rent is not paid on time, tribunals are simply closed. Buildings are also often too small for the proper functioning of a tribunal: judges have to share their offices with prosecutors and other court officials; there are no hearing rooms; and there is no detention room in which to keep the accused. Sometimes electricity is also lacking. In some tribunals in the regions, judges and prosecutors also have to live on the tribunal's premises. Such housing conditions do not transmit the weight and solemnity of justice. The perception of judges' independence, including their independence from the other actors of the justice system, is also affected.

43. During the visit, new headquarters were being built through a Chinese cooperation programme for the Supreme Court of Justice and other higher instance tribunals. Concerns were raised that nothing was planned for the lower tribunals, which function in the most dreadful conditions and yet are the first contact for court users.

44. Judges also have to work with severely limited material resources. They do not have enough computers, printers, toner, paper and other basic office supplies. Neither do they have service vehicles, and often have to rely on the goodwill of members of the public for transport. Staff supporting their work lack qualifications and training. Furthermore, judges' salaries are relatively low and do not reflect the importance of the position and the obligations that come with it. The Special Rapporteur was informed that the National Assembly would address that issue at its next session.

45. Such conditions of work not only provoke serious delays in the delivery of justice and undermine its quality, but also affect the independence and dignity of judges, who find themselves extremely vulnerable to corruption and many types of external pressure and interference, and the confidence and respect of court users.

46. The budget allocated to the tribunals seems rather insufficient. While tribunals have financial autonomy in principle, such autonomy is not clearly implemented in practice, leaving the justice system dependent on political will. The Special Rapporteur is further concerned by the lack of transparency surrounding the sums generated by each tribunal from court fees and how such money is used. There is also no transparency regarding the amount of funds received from donors by the Government and the way such funds are being redistributed.

D. Prosecutorial services

47. The autonomy of prosecution services is protected under the Organic Law on the Public Ministry. Prosecutors are appointed through a publicly advertised competitive selection process by the Superior Council of Magistrates of the Public Ministry, which is also in charge of transfers, disciplinary measures and the overall administration of the prosecutorial career. Two new important requirements for entering the profession were

introduced in 2012, namely, to be a law graduate and to have successfully completed the training course for prosecutors taught at the National Judicial Training Centre.

48. There is no stand-alone code of conduct for prosecutors. References to ethics and professional duties are included in the Statute of Magistrates of the Public Ministry. While there have been cases of prosecutors facing disciplinary proceedings, the Special Rapporteur was told that the provisions of the Statute are not always enforced in practice, or they are enforced in an arbitrary way.

49. Prosecution services function under the direction of the Attorney General, who is also the President of the Superior Council of Magistrates of the Public Ministry. Under the current legislation, the Attorney General has the power to take over any prosecutorial process whenever he or she sees fit. Concerns were expressed to the Special Rapporteur, as there have reportedly been instances where this power was used to interfere in specific criminal procedures. Concerns were also expressed about the cumulative functions of the Attorney General. Regular inspections of the work of prosecutors by the Superior Council of Magistrates of the Public Ministry to increase their compliance with rules and policies, as well as the overall competence of their office, are also lacking.

50. One major issue affecting the independence and effectiveness of prosecution services is the instability surrounding the function of the Attorney General. The tenure of the Attorney General is not fixed in law, neither are objective criteria for his or her dismissal. Therefore, the President of the Republic can appoint and dismiss Attorneys General at any time and without providing any justification, leaving them particularly vulnerable to political interference. In the past five years, five Attorneys General were dismissed or asked to resign. The previous one was dismissed in November 2015, barely one month after the visit of the Special Rapporteur. To address this situation, the assembly of the association of prosecutors presented suggestions to the parliamentary commission on the revision of the Constitution, which included setting the tenure of the Attorney General at six years — thereby preventing the term from coinciding with the mandate of the President of the Republic — and clear grounds for dismissal.

51. Prosecution services also lack financial autonomy. Their budget is limited and, as a result, prosecutors work in difficult conditions. Like judges, they lack such resources as computers, phones, printers and ink, and means of transport. Their capacity to investigate crimes is therefore extremely restricted. Establishing statistics and extracting specific data, which could prove useful in guiding, refining or changing policies relating to prosecution and guidelines and in monitoring productivity, is also challenging, if not impossible. In addition, according to the Organic Law on tribunals, there must be a prosecutor everywhere there is a court, which is not the case in reality. In some remote places, working conditions are so difficult and discouraging that few prosecutors stay long enough to ensure stability in the provision of prosecution services.

52. In the investigation of crimes, prosecutors are assisted by a judicial police force. This force depends administratively on the Ministry of Justice, but works under the orders of the Public Ministry. While its competence extends over the whole territory, the judicial police is currently only present in Bissau. The force does not have enough police officers or vehicles, specific equipment or proper communication tools. Its headquarters and offices are inadequate and do not offer a secure working environment, and police officers lack training.

53. As there is no forensic laboratory in the country, prosecutors and judicial police officers cannot collect and analyse ballistic, DNA or other types of scientific evidence, therefore having to rely almost exclusively on witness-based evidence. They do not even have proper tools to collect and analyse fingerprints or tap telephones. The difficulties

facing investigative bodies are further compounded by the fact that there is no witness protection programme.

54. The Special Rapporteur is particularly concerned about reports of strong pressure, threats, including death threats, harassment and intimidation exerted against members of prosecution services and the judicial police, in particular by members of the military or other police forces, to deter them from investigating and prosecuting certain cases, especially cases linked to members of the Government or the National Assembly. There is no protection mechanism to ensure the security of prosecutors, judicial police agents or their families. As one person noted, under these circumstances it is not easy to be courageous.

E. Lawyers

55. While lawyers are not expected to be impartial in the same way as judges, their independence must not only be respected, but also actively protected. The legal profession plays a vital role in ensuring the fair administration of justice, hence, it cannot be treated as a simple business, either by public institutions or lawyers themselves.

56. In Guinea-Bissau, a national bar association was established in 1991 and is officially recognized by the authorities. The association currently has more than 300 members, and its attributions, competences, structure and organs, as well as the requirements for becoming a member, are defined in its founding document, the Statutes of the bar association of Guinea-Bissau. The conditions and criteria of admission to the legal profession are nevertheless not clearly established in national legislation and there is no compulsory uniform bar examination, resulting in significant disparities in competence among lawyers. The association is reportedly working with the National Judicial Training Centre on setting up such a bar examination.

57. Lawyers have the duty to conduct themselves in accordance with the recognized standards and ethics of the profession. Yet there is no comprehensive code of conduct. The Statutes of the bar association dedicates a chapter to professional ethics, which includes references to both the rights and duties of lawyers who are members of the association, but this is insufficient, in the opinion of the Special Rapporteur. The association has exclusive competence to take disciplinary measures against its members for any action or omission in breach of the duties set out in the Statutes.

58. The bar association is working on a draft organic law on the legal profession together with a code of conduct. The Special Rapporteur welcomes that initiative and urges the association to take a clear and strong stance on professional ethics and misconduct. Once in place, the new code of conduct should be duly enforced through disciplinary procedures clearly established in the law and that respect international standards on the matter, including the Basic Principles on the Role of Lawyers.

59. Lawyers also need better access — or access at all — to continuing legal training, including on international human rights law. Adequate training opportunities are essential to enable lawyers to keep abreast of legislative developments and new technologies and to acquire specialized knowledge, thereby improving the quality of the services they provide. In particular, the provision of quality training on professional ethics will be indispensable in the implementation of the future code of conduct.

60. The Special Rapporteur was concerned by reports of intimidation, persecution and attacks against lawyers, including by the police and the armed forces, for discharging their professional functions, in particular when they defend military or political figures or other persons deemed controversial. International standards clearly indicate that in performing their duties lawyers should not be identified with their clients or their clients' causes.

Defence lawyers play a central part in the chain of justice, especially when it comes to ensuring the right of everyone to a fair trial. In most cases, lawyers do not know who to turn to for protection.

61. Lawyers also face difficulties in their daily work. For instance, they do not always have access to detainees, or only during family visiting hours, their work is stalled by legal or administrative procedures that are not completed in a timely fashion, or they are not given prior notice when hearings are held or cancelled. These difficulties are often compounded when the lawyer is a woman.

62. Finally, the absence of lawyers outside of Bissau is highly concerning. Given the essential role played by lawyers in the justice system and in ensuring a fair trial for defendants, such absence is extremely problematic. The bar association is developing a project to establish "antenna desks" in several regions, to be staffed on the basis of a system of shifts. This initiative must be supported, and incentives provided to ensure wide participation of lawyers, as it would contribute to improving access to justice.

F. Fair trial and due process guarantees

63. Judicial guarantees are enshrined in the great majority of constitutional texts and human rights instruments to ensure that individuals have access to competent, independent and impartial tribunals for the settlement of their disputes and for the determination and enforcement of their rights, and when they stand accused of breaching the law. Guinea-Bissau is no exception: the Constitution and legislation guarantee due process of law and fair trial.

64. Fair trial is not the product of voluntarism though. It requires independent judges, prosecutors and lawyers working in an environment governed by the rule of law. As noted in the preceding sections, the difficulties and obstacles faced by judges, prosecutors and lawyers in carrying out their professional duties are countless. Under such circumstances it is evident that respect for due process and fair trial guarantees is negatively affected. In particular, proceedings are frequently delayed beyond what is acceptable, often amounting to a denial of justice. Such delays seriously affect the credibility of the justice system.

65. Difficulties in ensuring due process and fair trial especially affect criminal justice. For instance, the Criminal Procedure Code provides that arrests are limited to 48 hours, yet the lack of resources and of personnel prevents any investigation from being conducted within such short periods of time. As a result, suspects are either deprived of their liberty for longer than is legal or they are released, a situation that is difficult for the population to understand.

66. There is also no institutionalized legal assistance programme for those lacking resources to hire a lawyer. Upon request, legal assistance is provided in criminal cases by the bar association under a protocol signed with the Government. However, the process is slow and not always successful, since the State does not pay financial compensation to lawyers for the services provided or even cover their costs.

G. Military justice

67. During the visit, many interlocutors strongly criticized the country's military justice system, stating that it lacked independence, impartiality and competence, as well as accountability procedures. They also reported recurrent clashes of jurisdiction between military and civilian tribunals, which often delayed proceedings. Like the ordinary court system, military tribunals suffer from a serious lack of financial and material resources.

68. Judges of the Superior Military Tribunal and the regional military tribunals are appointed by the executive branch. This selection process is problematic, because it opens the door to interference and manipulation. In addition, as judges are members of the armed forces, issues related to military hierarchy further complicate their independence. The tribunals are also functionally dependent on the General Staff of the Armed Forces. Additionally, despite claims to the contrary, not all military judges have a law degree. In this regard, the Special Rapporteur heard serious complaints about the lack of competence of military judges and the difficulties they face in applying important concepts of law and professional ethics. Moreover, the law does not guarantee the independence of military prosecutors, who can be arbitrarily dismissed. These features seriously jeopardize the independence of military tribunals and their ability to deliver fair and impartial justice.

69. The Constitution limits the jurisdiction of military tribunals to crimes that are "essentially military", without defining those crimes. The main problem lies with the legal framework applying to military justice, which predates the Constitution and is seriously outdated. Under this framework, the jurisdiction *ratione materiae* of military courts extends well beyond what can reasonably be understood as a crime that is essentially military. Some military legal provisions, for instance, those which provide for the imposition of the death penalty or forced labour, are in direct contravention of constitutional rights.

70. Military law also allows the prosecution of civilians before military tribunals. Under international law, trials of civilians by military or special tribunals should be exceptional, i.e., they should be limited to cases where the State can show that resorting to such trials is necessary and justified by objective and serious reasons and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.

71. In addition, military tribunals admittedly process cases outside of their competence. The Special Rapporteur was told that sometimes military tribunals threaten to send cases under their review to civilian courts as a way to push for what could be called an extrajudicial conciliation or settlement before the military jurisdiction. Where conflicts arise over the jurisdiction of tribunals, those conflicts should be brought for resolution before the civilian courts. It is not for the military judge or any party to a case to pick the jurisdiction before which a case should be brought, it is a matter of law. Finally, the administration of justice through military tribunals raises serious concerns in terms of access to justice and impunity for past human rights abuses.

72. Plans to revise the Code of Military Justice are reportedly under way. It is essential that the new code incorporates human rights standards and principles relating to the administration of justice, such as the right to a fair trial and the principle of equality before the courts, as these apply fully to military tribunals. In particular, the reform of military justice should urgently address issues related to independence, impartiality and competence. Military judges must receive adequate legal education and opportunities for continuing training and capacity-building.

H. Impunity

73. The political and military instability in Guinea-Bissau, the subsequent numerous presidential pardons and the amnesty law of 2008[2] largely contributed to the culture of impunity that prevails in the country. It is clear that none of these amnesty measures

[2] The amnesty law, approved by the National Assembly on 13 December 2007 and signed by the President on 18 April 2008, covers anyone involved in coups d'état between November 1980 and October 2004.

effectively prevented further coups d'état, political assassinations, military unrest and instability.

74. Even serious incidents that are not covered by pardons or the amnesty law are rarely investigated, let alone brought to justice. For instance, investigations into the 2009 assassinations of former President João Bernardo Vieira, former Minister of Defence Hélder Proença and a former Member of Parliament, Baciro Dabó, and the 2011 disappearance of a Member of Parliament were initiated but not finalized. The investigation into the 2009 assassination of former Chief of the General Staff General Batista Tagme Na Waie was finalized and three suspects charged, but the trial has yet to start. Furthermore, serious human rights violations, including the abduction and beating of opposition politicians, the extrajudicial killing of 11 men accused of plotting a counter-coup, arbitrary detention and limitations on the freedoms of expression and peaceful assembly that marred the 2012-2014 transitional period have not been adequately investigated.

75. Far from contributing to national reconciliation, amnesty measures have negatively affected the credibility of the justice system and the population's perception of its independence. Impunity for serious human rights violations and other politically motivated crimes has also had far reaching consequences on people's attitude towards the law and the formal justice system. The common perception is that violating the law does not really have consequences.

76. In July 2013, the first conference on impunity, justice and human rights was organized in Guinea-Bissau with the support of UNIOGBIS, the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme (UNDP) and the ECOWAS Court of Justice. Authorities should thoroughly consider the key recommendations of that conference, as without a comprehensive approach that includes measures to uncover the truth, prosecute those responsible and design and enforce essential reforms to prevent the recurrence of such acts, there will be no viable reconciliation in the country.

77. Impunity is not limited to politically motivated crimes and violations directly related to situations of political unrest. For instance, few cases of forced marriage, female genital mutilation, sexual violence, child exploitation, domestic violence or drug trafficking are brought to justice. Positive efforts to carry out investigations into these crimes are often frustrated when the prosecution service does not promptly follow through and the suspects have time to leave the country. The fact that there still is no protection mechanism for victims and witnesses, despite the provision of the Criminal Procedure Code that requires the establishment of a support unit for victims and witnesses, does not encourage people to engage with the formal justice system. Fearing retaliation or even threats to their lives, victims and witnesses are reluctant to come forward.

I. Access to justice

78. Access to justice in Guinea-Bissau is out of reach for most people. The barriers for people to have access to the formal justice system are legion. As seen above, there are no functioning tribunals in many parts of the country. For the majority of the population, the distance to the closest tribunal proves insurmountable, since they do not have access to means of transportation. In some areas there are no police officers to whom a complaint can be presented. The imposition of court fees that are too high for the majority of the population — about 1.5 times the minimum salary — also discourages people from resorting to the tribunals. The fees can be waived, but in practice it is difficult to gather all the information necessary to prove indigence. The fact that some people lack legal identity because their births were not officially registered can also represent a major obstacle.

79. Additionally, many Bissau-Guineans are not educated about their rights, the recourses at their disposal and how to access them. Access to information in a language they understand is extremely difficult for many, especially those living in remote areas, a difficulty which is compounded by high illiteracy rates. Yet, as someone indicated to the Special Rapporteur, informing the population about their rights will be pointless if there are no tribunals to enforce those rights. Any measures to improve access to justice will have to be developed in an integrated way.

80. Article 32 of the Constitution states that all citizens have the right to access the courts to seek redress for violations of their rights and that this right cannot be denied on economic grounds. However, as seen above, legal assistance operates inefficiently and is unable to meet the real difficulties faced by citizens in accessing justice. Civil society, through its various associations and organizations, whose members are mainly volunteers, plays an admirable role in improving access to information and sensitizing and educating people about their rights. However, civil society cannot be asked to take on responsibilities that are ultimately incumbent on the State.

81. In an effort to address such serious barriers to accessing justice, the Government adopted Decree-Law No. 11/2010 to provide a legal framework for legal aid. Soon after, it adopted Decree No. 11/2011, creating the office of legal information and advice and centres of access to justice. The centres offer legal information and consultation services; they also provide mediation and conciliation services, assist people who have problems with the police, and orient people on how to access the formal justice system. In some cases, the centres help victims prepare claims, accompany them to court and submit requests for exemption of court fees. They also visit schools to talk to children and their parents. The centres try to focus particular attention on vulnerable persons, such as persons deprived of liberty, women, children, and persons with disabilities. They work in close coordination with civil society organizations and the bar association.

82. There are currently two centres of access to justice in Bissau, one in Bafatá, one in Canchungo and one in Mansoa. More centres are needed, as are more personnel, material resources and training opportunities for staff. Although it is a joint project between the Ministry of Justice and UNDP, the programme is entirely dependent on the financial and technical support of UNDP. The authorities have to date not been able, or willing, to substitute UNDP in financing any part of the project. There are serious concerns about what will happen to the centres once UNDP decides to end its support. A project proposal for the functioning of the centres was reportedly submitted to the Ministry of Justice, which forwarded it to the Ministry of Finance, where it was rejected. The apparent lack of interest of the Government in such an important endeavour is of high concern to the Special Rapporteur. Moreover, she notes that the creation of the centres of access to justice seems to be one of the only concrete measures taken to implement Decree-Law 11/2010, and this is simply not sufficient.

J. Informal justice systems

83. Recourse to community and religious leaders to settle disputes is deeply rooted in the culture and traditions of Guinea-Bissau. The "justice" system established during colonization, which consisted of administrative police and ad hoc tribunals that served as organs of repression under the command of the colonial capital, has left pervasive traces in people's minds. This historical lack of trust in the judicial authorities is compounded by the current dire state of the formal justice system, which is unable to deliver justice to most of the population.

84. While accurate data is unavailable, it is clear that few people resort to the formal justice system. As seen in the section above, in many places justice is not accessible,

leaving ample room for community and religious leaders to continue to exercise their power without competition. Traditional leaders take advantage of the gap left by the absence of State agents. They also represent an alternative that is more attractive than the formal justice system. Indeed, they are perceived by most as providing quicker and less expensive remedies, which are more in accordance with the specific cultural, religious or other traditional values and beliefs of the community and therefore more acceptable.

85. Nevertheless, the Special Rapporteur is concerned about some characteristics of the enforcement of such "traditional justice", in particular regarding the treatment of women (very few leaders are women), children and other vulnerable persons. Many traditions and customs are in contradiction not only with international human rights standards, but also with the State's own constitution and laws. Traditional leaders' decisions also depend largely on the circumstances of a case and how leaders interpret those circumstances, allowing for a substantial level of discretion.

86. There have been attempts at engaging with traditional leaders and familiarizing them with the content of positive law and fundamental rights, but those attempts are not generalized. Many leaders have also expressed some level of resistance to human rights discourse.

87. Traditional leaders said they normally deal only with what they deem as simple cases or disputes, most related to inheritance or land ownership. They reportedly refer to the formal courts cases involving violence, the use of guns or knives, or important sums of money. Many interlocutors of the Special Rapporteur expressed serious doubt about such a claim. For instance, during the six months preceding the visit of the Special Rapporteur, not one case was referred to the regional tribunal of Bafatá by traditional leaders.

88. The Special Rapporteur agrees with the position of her predecessors, i.e., that decisions made through informal justice systems must meet a series of basic procedural and fair trial guarantees and conform to international human rights standards to be considered acceptable. In the context of Guinea-Bissau, solutions to reduce the influence of traditional leaders to the benefit of positive law and the courts will have to be considered comprehensively; they cannot be disassociated from the measures that are to be urgently taken to improve the quality, functioning and reach of the formal justice system.

K. Legal education, training and capacity-building

89. All stakeholders met during the visit agreed that high-quality legal education and professional training, including specialized training, for judges, prosecutors, lawyers and court officials are essential in order to ensure an independent, impartial and effective administration of justice. Many noted the existence of many challenges in this domain, in particular with regard to continuing professional training.

90. Guinea-Bissau has a faculty of law that was established in 1989 with the support of the Portuguese authorities, serving approximately 350 students. About 30 students graduate every year. The great majority of them join the judiciary, the Public Ministry or other institutions of the justice system. Some also establish themselves as lawyers. The faculty's curriculum covers the study of international law, including human rights law, during the second year of the programme. Many interlocutors acknowledged the good quality of the education provided by the faculty. The Special Rapporteur nevertheless notes that in order to maintain or even improve quality, support to the faculty should not stop. Regular assessments should be carried out to identify academic needs and gaps, and measures should be adopted to address those needs.

91. The National Judicial Training Centre was created in 2011 by Decree-Law No. 4/2011. Its mission is to carry out legal training and research and to disseminate

technical knowledge. According to the decree-law, successfully completing the Centre's initial training is a compulsory requirement to work in the justice sector, in particular as a judge, prosecutor, lawyer or bailiff. The Centre also offers continuing legal training, with special focus on legal procedures and practice, as well as human rights training.

92. The National Judicial Training Centre has been supported technically and financially by UNIOGBIS and UNDP. It constitutes a positive development that needs to be consolidated. The Centre's infrastructure does not provide for sufficient space, and material resources are also lacking; for instance, the Centre does not have a library or access to new technologies. The achievements reached through the Centre should be maintained and further reinforced with the implementation of a system of continuing legal education that will ensure that all the actors of the justice system are kept up to standard.

93. The National Judicial Training Centre recently received an official request from the military judicial authorities to organize specific training on the distinction between ordinary and military crimes. The Special Rapporteur believes that this request not only confirms the essential role that the Centre has played to date in the area of legal training, but also shows how much more the Centre must do. Specialization must be achieved in various fields that require it for justice to be competent and effective, such as transnational organized crime and drug trafficking, including money laundering issues, and juvenile justice.

94. Civil servants working for the courts and the Public Ministry are also in dire need of adequate and specialized training. Training on the registration, filing and archiving of cases, and computerization, among others, should be organized urgently.

V. Conclusions

95. In almost every meeting during the visit, the state of the justice system in Guinea-Bissau was described as "sad", "terrible" and "reflecting the situation of the country". Justice is distant from the people. The lack of tribunals, information, trust and education pushes most people to resort to traditional leaders to settle their disputes. Justice is expensive and the great majority of the population cannot afford its services. The quality of services delivered is not good. The treatment of cases does not always respect due process and judicial delays often amount to a denial of justice. Furthermore, judges, prosecutors, lawyers and court staff are not adequately trained to discharge their professional functions.

96. Justice is poor. The justice system lacks adequate facilities, including tribunals, investigation tools, detention cells and basic office supplies. The salaries of judges and prosecutors are not adequate. Justice is insecure. Without a protection mechanism, judges, prosecutors, judicial police agents and lawyers are left exposed to threats and pressures, and so are victims. Justice is also military, yet it should not be, at least not to the extent observed in Guinea-Bissau; this is so for many reasons, including the lack of independence, impartiality and competence of military tribunals. Any reform of this system will have to go hand in hand with a comprehensive reform of the defence sector.

97. Impunity is rampant, political instability is high and the crimes of the past are still to be addressed. The country is also left at the margins of the fight against transnational organized crime, whether in the form of human trafficking, weapons and drug smuggling or money laundering, among others, which today is global. Guinea-Bissau is therefore extremely vulnerable to the impact of such crimes on its economy, development and social fabric. Corruption is also widespread, including among actors in the justice system, although difficult to assess.

98. Despite the Special Rapporteur's daunting findings, it seems that the justice system has faced difficulties in getting and maintaining the authorities' attention. The lack of continuity and sustainability in the management of judicial institutions works against any reasonable plan to improve the system. More ad hoc or short-term interventions are needed, yet at the same time continuity and accountability are essential to allow for longer-term improvements and change. When designing reforms, it is important to look at the whole chain of justice, not only the judges, prosecutors and lawyers. Reform aspirations must be accompanied by short-term goals so as to generate tangible and visible results to help build people's confidence in the justice system. Progressive and sustainable processes should reinforce and expand those results.

99. The Government needs to accept its responsibilities. The United Nations and other organizations are not there to replace State authorities: the ultimate goal of joint programmes is that the State takes over to build on the results. In this context, it is important to underline that during the visit both the President and Prime Minister assured the Special Rapporteur of their commitment in the area of justice and the rule of law. Another positive note is the above-mentioned judgment of unconstitutionality issued by the Supreme Court of Justice, which was largely perceived as an indicator of the renewed independence of the Court from political power.

100. The task is monumental, but the Special Rapporteur refuses to accept the idea that improvements are not possible. Guinea-Bissau can count on a young generation of qualified legal and other professionals who are willing and able to work hard to improve the justice system if they are given the opportunity to do so. Non-governmental organizations and associations have demonstrated a well-articulated understanding of issues concerning the justice system from a human rights perspective. Their contributions should not be overlooked; rather, they should be put at the forefront of reform.

VI. Recommendations

101. The Special Rapporteur understands that, given the economic and development situation of Guinea-Bissau, in the short and medium term, many of the following recommendations can be put in place and implemented only with the close and continued technical and financial support of international donors and the United Nations system.

102. Urgent measures should be taken to establish and operationalize the tribunals and prosecution offices provided for in law. Judicial police outposts should be created. The presence of lawyers outside of Bissau should also be promoted.

103. Data should be gathered on the number of women in the judiciary, prosecution services and related professions so as to take adequate measures to improve their representation at all levels of the courts and the justice chain.

104. In the context of the constitutional revision envisaged by the National Assembly, a careful analysis of constitutional provisions against the international human rights obligations of Guinea-Bissau should be conducted. In particular, the revised Constitution must include a fixed mandate for the Attorney General, recognize the independence of the position and set out clear criteria for dismissal, as well as provisions strengthening the independence of justice and the rule of law. Such a constitutional review should be participative, allowing for in-depth discussions with all stakeholders, including members of the judiciary, the legal profession and civil society.

105. A comprehensive review of domestic legislation should be conducted to harmonize its content with the country's international obligations and to adapt legislation to present needs. In particular, legislation relating to military justice, the Civil Code, the Labour Code, the Criminal Code and the Criminal Procedure Code must be updated urgently.

106. All laws and regulations should be made easily accessible to the public. Important legislation should be translated into the Creole of Guinea-Bissau and other native languages.

107. Concrete measures should be taken to implement existing legislation, in particular the recent laws on domestic violence and female genital mutilation, as well as ratified international human rights instruments.

108. Judicial decisions and judgments, including summonses and detention orders, should be strictly executed.

109. The selection process and criteria of judges and prosecutors should be clearly established in law and should ensure that only candidates with the highest competence and expertise in law, including human rights law, are appointed. The process should be anonymous and conducted in writing by an independent body to ensure impartiality.

110. The composition of the Superior Council of the Judiciary should be revised to increase the representation of judges and reduce, or even exclude, representation from the executive and legislative branches.

111. A code of conduct for judges that is in line with the Bangalore Principles of Judicial Conduct should be adopted after proper consultation and strictly enforced.

112. All allegations of misconduct of judges, including corruption, should be properly investigated under previously set, clear and transparent rules. Disciplinary procedures should be conducted with full respect for international human rights standards, in particular due process of law and fair trial guarantees.

113. The budget allocated to the courts and prosecution services should be substantially increased to ensure that they have the financial resources to function properly. Judges' salaries should be clearly set in law.

114. The judiciary and the Public Ministry should be independent in terms of managing their financial resources. Yet they should be fully transparent on both the allocation and use of funds, including funds generated by court fees.

115. Courts, prosecution services and the judicial police should be located on premises that are acceptable, adequate and secure. They should be provided with the material resources that allow them to perform their tasks effectively.

116. As provided for in the respective laws, inspections of the work of judges and prosecutors should be conducted regularly with a view to improving efficiency and compliance with professional ethics.

117. A code of conduct for prosecutors that is in accordance with the Guidelines on the Role of Prosecutors should be adopted after proper consultation and strictly enforced.

118. All complaints of misconduct filed against prosecutors should be processed and investigated expeditiously under appropriate and previously set procedures. Disciplinary procedures should be conducted with full respect for international human rights standards, in particular due process of law and fair trial guarantees.

119. Forensic science should be urgently developed and modern investigation tools should be made available to investigative bodies.

120. The judicial police should receive adequate financial and material resources to function effectively.

121. Legislation that regulates the legal profession and guarantees its independence should be adopted after consultation with lawyers and representatives from the bar association; it should comply with relevant international human rights standards.

122. A programme to ensure the presence of lawyers outside of the capital should be urgently set up by the bar association. Incentives should be provided to lawyers who volunteer.

123. Measures should be taken to improve the competence and professionalism of lawyers, including the introduction of a compulsory standardized written bar examination as a requirement for admission to the legal profession.

124. A code of conduct for lawyers that is in line with the Basic Principles on the Role of Lawyers should be adopted by the bar association and strictly enforced.

125. Complaints about the professional conduct of lawyers should be processed expeditiously by the bar association under appropriate procedures that respect the right to a fair hearing.

126. Any pressure on, interference with, intimidation of, harassment of, or threats or attacks against judges, prosecutors, lawyers or other judicial actors should be investigated promptly and carefully and perpetrators held accountable.

127. After consultations with the actors of the justice system, an efficient mechanism should be put in place to ensure their protection and that of their families.

128. Priority should be given to establishing an adequate victim and witness protection programme.

129. An effective programme of free legal assistance for those lacking economic resources should be institutionalized and sufficient funds allocated. The bar association and its members should fully collaborate with such a programme, but it is essential that fair compensation be paid by the State for their services.

130. The requirements for the exemption of court fees in case of indigence should be clarified and simplified.

131. Concrete steps should be taken towards the establishment of a juvenile justice system; for instance, judges and prosecutors should be offered the opportunity to specialize in children's rights.

132. In an effort to break the culture of impunity, all serious human rights violations and politically motivated crimes must be investigated effectively and perpetrators must be prosecuted and sanctioned if found guilty.

133. The recommendations from the conference on impunity, justice and human rights should be considered seriously and a comprehensive programme detailing concrete steps to be taken should be devised.

134. Public awareness should be raised about the content of laws, their application, the rights they recognize and the obligations they entail, and on how to access the formal justice system. Public awareness strategies and tools should take into account the high illiteracy rate in the country and information should be made available in a language people understand.

135. **Centres of access to justice should be provided with more financial and material resources; more centres should be established in other regions of the country. The State should design a concrete plan to take over the funding of these centres from UNDP.**

136. **Efforts to familiarize and sensitize traditional leaders to domestic laws and international human rights obligations should continue and be reinforced.**

137. **Continuous legal education and professional training should be encouraged and more opportunities provided to judges, prosecutors, lawyers and other judicial actors. More specialized courses and trainings should be offered, including on how to combat transnational organized crime; for this purpose needs assessments should be conducted regularly. Training in human rights law should be compulsory for all judges, prosecutors and lawyers.**

138. **Staff working for the judiciary or public ministry should also be appropriately trained and have opportunities to develop their professional skills. For this purpose, support for the National Judicial Training Centre should be strengthened, including by providing the necessary financial and material resources.**